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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1911.

No. 914.

CHARLES N. HASKELL, CHARLES WEST, JOHN J. SHEA, ET AL., APPELLANTS,

vs.

THE KANSAS NATURAL GAS COMPANY, THE MARNET MINING COMPANY, AND A. W. LEWIS.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF OKLAHOMA.

FILED DECEMBER 30, 1911.

(22,990)

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JANUARY 26, 1912.

1 In the Supreme Court of the United States.

Consolidated Cause No. 856.

CHARLES N. HASKELL et al., Appellants,
vs.
THE KANSAS NATURAL GAS CO., Appellee.

CHARLES N. HASKELL et al., Appellants,
vs.
THE MARNET MINING COMPANY, Appellee.

CHARLES N. HASKELL et al., Appellants,
vs.
A. W. LEWIS, Appellee.

Appeal from the United States Circuit Court within and for the Eastern District of the State of Oklahoma.

Filed —— —, 1911.

The following is a transcript of such of the record and proceedings heretofore had in said cause as has been ordered to be prepared and authenticated as necessary to the hearing in the Supreme Court of the United States.

2 On the 11th day of July, 1911, there was filed in this Court the mandate of the Supreme Court of the United States in said cause upon appeal, which said mandate contained an order permitting either party to apply to the Circuit Court of the United States for the Eastern District of Oklahoma, for a modification of the decree rendered in said cause on the 1st day of February, 1911, insofar as they may deem such modification required to secure conformity to the opinion of the Supreme Court of the United States in said cause on appeal; which said mandate containing said order, was in words and figures as follows:

3 UNITED STATES OF AMERICA, *ss:*

[SEAL.] The President of the United States of America to the Honorable the Judges of the Circuit Court of the United States for the Eastern District of Oklahoma, Greeting:

Whereas, lately in the Circuit Court of the United States for the Eastern District of Oklahoma before you or some of you, in a cause between Kansas Natural Gas Company, The Marnet Mining Company and A. W. Lewis, complainants, and Charles N. Haskell, Charles West et al., defendants, Consolidated No. 856, wherein the decree of the said Circuit Court, entered in said cause on the 1st day of February, A. D. 1911, is in the following words, viz:

"The three cases pending herein of Kansas Natural Gas Company, plaintiff vs. Charles N. Haskell, et al., defendants No. 856; The Marnet Mining Company, plaintiff, vs. Charles N. Haskell, et al., defendants, No. 857; and A. W. Lewis, Plaintiff vs. Charles N. Haskell, et al., defendants No. 858, having been heretofore by stipulation of parties and order of court, consolidated, and the same, and each of them, now coming on regularly for hearing and final decision and decree on the bills of complaint and the separate amended answers of defendant Charles West, and the stipulation of the parties hereto, and the motion of plaintiffs therefor, and all the parties appearing by their respective attorneys and the causes being submitted to the court on said pleadings and stipulation, and the court having duly considered the same and being fully advised in the premises doth find, order adjudge and decree as follows:

1. Defendants J. E. Love, J. J. McAlester, Pete Hanraty, A. P. Watson and John J. Shea, have filed herein disclaimers of any intent or purpose to do or perform any of the acts or undertake any of the proceedings as charged against them and each of them in plaintiff's bills of complaint filed herein, and for that reason said bills of complaint, as to said defendants in this paragraph named are dismissed.

2. That the said motion of the plaintiff herein for a permanent and perpetual injunction against the several defendants herein is by the court sustained and granted.

3. The Court doth find the issues and equities herein in favor of the plaintiff, and that the plaintiff is entitled to the relief prayed for in the bill of complaint herein; and doth find, adjudge and decree that chapter 67 of the Session Laws of the State of Oklahoma of 1907-8 passed and enacted by the Legislature of said State of Oklahoma, and approved by the Governor of said State on the 21st day of December, 1907, and referred to in plaintiff's bill of complaint herein, is unreasonable, unconstitutional, invalid and void and of no force or effect whatever.

4 4. The temporary injunction heretofore ordered and entered herein is hereby made permanent and perpetual, and the defendants and each and every of them, their representatives agents, servants, attorneys, workmen, and employees, and all other persons whomsoever, advised, inspired, influenced, incited or prompted by them, or either of them, are hereby forever restrained and enjoined from committing any of the acts complained of by complainant in its, or his bill of complaint, and from tearing up or destroying, or in any way interfering with the laying, building, and construction of complainant's pipe lines, or any of the pipe lines referred to in the prayer of complainant's bill of complaint, in through or out of the State of Oklahoma, by reason of any of the terms or provisions or contents of Chapter 67 of the Session Laws of 1907-1908, passed and enacted by the Legislature of the State of Oklahoma, or by reason of any other claimed authority or statute of said state, or common law right, rule of action or unwritten law whatsoever; and from in any manner instituting, prosecuting, or conducting any suits, or suing out any writs of process in any of the State courts of

the State of Oklahoma against the complainants, or any one representing it, or him, for the purpose of enjoining, restraining or interfering with either of them in the laying, building, construction, maintenance or operation of any gas pipe line either under the authority of said Legislative act contained in said Chapter 67 of the Session Laws of Oklahoma 1907-8 above referred to, or under any other law or statute of the State of Oklahoma, or under any common law right, rule of action, or unwritten law of the State of Oklahoma.

5. The bonds heretofore filed herein by the plaintiffs upon the issuance of the temporary injunctions are hereby cancelled and annulled and the obligors and sureties therein are hereby discharged from any further liability or responsibility growing out of, or by reason, of the terms, stipulations and conditions of said bonds.

6. The taxable cost of the case shall be paid by the remaining defendants and the plaintiff and officers of this court may have proper process for the collection of the same.

To all of which orders, Judgments, and decrees, defendants at the time duly excepted, which exceptions are allowed.

Done and ordered of record in each of the above entitled and mentioned causes, in open court, this 1st day of February, 1911, at Muskogee, Oklahoma.

RALPH E. CAMPBELL, *Judge.*"

as by the inspection of the transcript of the record of the said Circuit Court, which was brought into the Supreme Court of the United States by virtue of an appeal taken by Charles West, Attorney General of the State of Oklahoma agreeably to the act of Congress, in such cases made and provided, fully and at large appears.

5 And whereas, in the present term of October, in the year of our Lord one thousand nine hundred and ten, the said cause came on to be heard before the said Supreme Court, on the said transcript of record, and was argued by counsel.

On consideration whereof, It is now here ordered, adjudged, and decreed by this Court that the decree of the said Circuit Court in this cause be, and the same is hereby, affirmed with costs; and that the said complainants recover against the said Charles West, Attorney General of the State of Oklahoma for their costs herein expended and have execution therefor.

May 15, 1911.

And afterwards, towit, on the 29th day of May, A. D. 1910, the following order was entered in this cause:

On consideration of the motion to modify the decree of this Court in this cause, and of the argument of counsel thereupon had, as well in support of as against the same.

It is now here ordered by the Court that either party be at liberty to apply to the Court below for a modification of the decree in so far as they may deem such modification required to secure conformity to the opinion of this Court.

You, therefore, are hereby commanded that such execution and proceedings *he* had in said cause, as according to right and justice,

and the laws of the United States, ought to be had, the said appeal notwithstanding.

Witness the Honorable Edward D. White, Chief Justice of the United States, the 16th day of June in the year of our Lord one thousand nine hunderd and eleven.

Costs of Complainants:

Clerk..... $
Printing Record..... $ paid
Attorney..... $

$

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

6 Endorsed as follows: File No. 22,537. Supreme Court of the United States. No. 916. October Term, 1910. Charles West, Attorney General of the State of Oklahoma vs. The Kansas Natural Gas Company et al. Filed in open court Jul- 11, 1911. L. G. Disney, clerk U. S. Circuit Court, Eastern Dist. Okla. Mandate.

7 And thereafter on the 19th day of July the defendants Charles N. Haskell, et al., pursuant to said order of the Supreme Court of the United States, filed their motion to modify such decree, which said motion was in words and figures as follows, to-wit:

8 In the United States Circuit Court for the Eastern District of Oklahoma.

No. 856.

KANSAS NATURAL GAS COMPANY, Plaintiff,
vs.
CHARLES N. HASKELL et al., Defendants.

No. 857.

THE MARNET MINING CO., Plaintiff,
vs.
CHARLES N. HASKELL et al., Defendants.

No. 858.

A. W. LEWIS, Plaintiff,
vs.
CHARLES N. HASKELL et al., Defendants.

Consolidated. No. 856.

Come now the defendants in the above entitled consolidated cause, and in pursuance of the order of the Supreme Court of the United

States, in said cause, on appeal, entered on the 29th day of May, 1911, which said order was in words and figures as follows:

"On consideration of the motion to modify the decree of this court in this cause, and of argument of counsel thereupon had, as well in support of as against the same.

"It is now here ordered by the court that either party be at liberty to apply to the court below for a modification of the decree in so far as they may deem such modification required to secure conformity to the opinion of this court," move the court to modify the decree heretofore entered herein, on the 1st day of February, A. D. 9 1911, to secure conformity to the opinion of the Supreme Court of the United States, rendered in said cause on appeal on the 15th day of May, A. D., 1911, and in accordance with said order hereinbefore set out, in the following particulars, to-wit:

1. That that portion of the decree of this court which finds, adjudges, and decrees that Chapter 67 of the Session Laws of Oklahoma, 1907-08, passed and enacted by the legislature of said State of Oklahoma and approved by the Governor of said State on the 21st day of December, 1907, is unreasonable, unconstitutional, invalid and void and of no force and effect whatever, be modified so that sections five, six and seven of said Chapter 67 be excepted, and said sections five, six and seven, be decreed valid and in full force and effect.

2. That that portion of said decree which restrains the defendants and each and every of them, their representatives, agents, servants, attorneys, workmen and employees, and all other persons whomsoever, advised, inspired, influenced, incited or prompted by them, or either of them, from in any way interfering with the laying, building and construction of plaintiffs' pipe lines, or from in any manner instituting, prosecuting, or conducting any suits, or suing out any writs of process, in any of the state courts of the State of Oklahoma against the complainants or any one of them, for the purpose of restraining, enjoining, or interfering with either of them in the laying, building, construction, maintenance or operation of any gas pipe line either under the authority of said Chapter 67 of 10 the Session Laws of Oklahoma, 1907-08, or under any common law right, rule of action, or unwritten law of the State of Oklahoma be modified so as to apply only to pipe lines which are laid, constructed and maintained in accordance with the provisions of said sections five, six and seven of said Chapter 67, and which in no way violate any of the provisions of said sections five, six and seven.

3. That that portion of the decree which restrains defendants from proceeding against plaintiffs because of its violations of the provisions of said Chapter 67, which prohibit the transportation of gas by pumps, through pipe lines, under a greater pressure than that authorized by law, should be modified to conform to the opinion of the Supreme Court of the United States, which holds that the State may control the method by which gas is taken from wells in the state and transported through the State, by forbidding the use of pumps.

4. Said Chapter 67 is modified by the Act approved March 27, 1909 (Art. 2, Chap. 26, Session Laws 1909; Art. 3, Chap. 75, Compiled Laws of Oklahoma, 1909, Snyder), Section 11 of which prohibits the use of pumps or other artificial means in the transmission of gas, when used to the injury of other corporations producing or consuming natural gas in the same gas district. The opinion of the Supreme Court holds that this is a proper subject of regulation by the State, yet the decree herein enjoins defendants from imposing this valid regulation and for that reason is inconsistent with the opinion of the Supreme Court.

5. Said chapter 67 as modified by said Act of March 27, 1909, prohibits the use of gas in such quantities as may affect gas pipe line corporations, gas consumers and gas producers in the same gas district, by reason of taking an undue quantity of gas or more than its proportionate share, due consideration being had for the size, capacity, pressure, facilities and powers of persons similarly situated, and the opinion of the Supreme Court in effect holds that this is a valid matter for state regulation, yet the decree herein enjoins defendants from enforcing these provisions of the law, and to that extent does not conform to the opinion of the Supreme Court.

6. The Supreme Court, in its opinion, does not hold that an interstate trader without being given the power of eminent domain and without compensation, might confiscate the property of the State, to-wit, the highway by placing its pipe lines in the highways, without the consent of the States, and against its will, yet the decree of this court enjoins defendants from bringing any suits to prevent such usurpation of power, and to this extent does not conform to the opinions of the Supreme Court.

7. The Supreme Court, in its opinion, does not hold that the defendants can be enjoined from bringing any suit under any other statute, common law right, rule of action or unwritten law whatsoever, and the decree herein, is in this respect inconsistent with the opinion of the Supreme Court.

8. The Oklahoma gas laws give special privileges in the highways of the state to domestic corporations, which serve the public, which privileges are withheld from those which do not render such service in return for such franchise. The plaintiffs allege that they intend to do no business in Oklahoma, and therefore can render no service to the public, in return for the privilege of using the highway of the state. Plaintiffs, by transporting gas by artificial means, thereby taking more than their pro rata share of the gas from each of the gas districts of the state, in this way prevent or make it impossible for the domestic corporations of the state to give to the public in Oklahoma a sufficient amount of gas to supply its needs. The decree herein, which restrains defendants from bringing any action against plaintiffs under any law, to prevent them from laying and operating their pipe lines, under any and all circumstances, has the effect of prohibiting the State from making a grant to domestic gas corporations, of privileges in

the highways of the state, in return for a service to the public, and in this respect is inconsistent with the opinion of the Supreme Court.

Defendants therefore move the court that said decree be modified as in the manner hereinbefore set out and that the court will please to make such other order in the premises as to the court shall seem meet.

CHAS. WEST,
Attorney General for the State of Oklahoma and Solicitor for Defendants.

STATE OF OKLAHOMA,
County of Logan, ss:

Charles West, makes solemn oath and says that he is one of the defendants in the above entitled cause; that the foregoing motion is not interposed for delay, and that the same is true in point of fact.

CHAS. WEST.

Subscribed in my presence and sworn to before me this 18th day of July, A. D. 1911.

[SEAL.]

JULIET WRIGHT,
Notary Public.

My Commission Expires Dec. 19, 1911.

13 I hereby certify that in my opinion the foregoing motion is well founded in law.

W. C. REEVES,
Assistant Attorney General, and
CHAS. WEST,
Att'y Gen'l of Okla.

Endorsed on back: Consolidated No. 856. In the United States Circuit Court for the Eastern District of Oklahoma. No. 856. Kansas Natural Gas Co., Plaintiff, vs. Charles N. Haskell, et al., Defendants. No. 857. The Marnet Mining Co., Plaintiff, — Charles N. Haskell, et al., Defendants. No. 858. A. W. Lewis, Plaintiff, vs. Charles N. Haskell, et al., Defendants. United States Circuit Court Eastern Dist. Okla. Filed Jul- 19 1911. L. G. Disney, Clerk. Chas. West, Att'y Gen'l, W. C. Reeves, Ass't Att'y Gen'l.

14 And thereafter on the 31st day of July, 1911, the plaintiffs Kansas Natural Gas Company, The Marnet Mining Company, and A. W. Lewis, filed their demurrer and answer and objections to the modification of said decree, which said demurrer and answer were in words and figures following:

15 United States Circuit Court, Eastern District of Oklahoma.

No. 856.

KANSAS NATURAL GAS COMPANY
v.
CHARLES N. HASKELL et al.

No. 857.

THE MARNET MINING COMPANY
v.
CHARLES N. HASKELL et al.

No. 858.

A. W. LEWIS
v.
CHARLES N. HASKELL et al.

Consolidated. No. 856.

I.

Now comes the complainants in the above entitled causes and file this their motion in the nature of a demurrer to the respondents' motion for a modification of the decree filed herein, and state that all the matters and things set forth in said motion for a modification of the decree have been passed upon and decided by the Supreme Court of the United States in an opinion handed down in said consolidated causes.

Wherefore, complainants pray that the motion be dismissed or be stricken from the files herein.

E. L. SCARRETT,
JNO. J. JONES,
EUGENE MACKEY,
Solicitors for Complainants.

16 United States Circuit Court, Eastern District of Oklahoma.

No. 856.

KANSAS NATURAL GAS COMPANY
v.
CHARLES N. HASKELL et al.

No. 857.

THE MARNET MINING COMPANY
v.
CHARLES N. HASKELL et al.

No. 858.

A. W. LEWIS
v.
CHARLES N. HASKELL et al.

Consolidated. No. 856.

Answer.

To the motion to modify the decree heretofore filed in the above consolidated cases, the Kansas Natural Gas Company, The Marnet Mining Company, and A. W. Lewis, the above named complainants answer and say:—

1st. They aver and charge that the whole of Chapter 67 and each and every section thereof, includings sections Nos. 5, 6 and 7, is unreasonable, unconstitutional, invalid, void and of no force and effect whatever in that, among other reasons, the dominant object and purpose of the act by its very terms and necessary effect is to harass, hamper, interfere with, and wholly prohibit the transportation of natural gas beyond the borders of the State of Oklahoma, and
17 the decree heretofore entered in this case is now res adjudicata and should not be modified or changed in any particular whatever.

2nd. Under the protection of the injunction heretofore granted in the above entitled cases, The Marnet Mining Company laid and completed a system of gas pipe line which begins in the southern part of Montgomery County, Kansas, and runs southwardly therefrom crossing the Kansas-Oklahoma State line and extends into Washington County, Oklahoma, the said system consists of an 18 inch trunk line running southwardly from the State line to the Hogshooter Field, so-called, in said Washington County a distance of about 28 miles, and a further distance of 3 miles constructed of 16 inch pipe; and of a 10 and 12 inch trunk line running southwardly from the said State line to the Vanderpool Field, so-called, also in said Washington County a distance of about 2 miles; and of a 16 inch trunk line running south-

wardly from the said State line to the said Vanderpool Field a distance of about 1 mile. These trunk lines have various branch and gathering lines running to the several wells from which the owners thereof are selling and delivering gas into the said lines. The whole of the said system cost on February 1, 1911, about $554,000.00, and since then a further investment has been made until such cost now aggregate- $604,000.00. The whole system connects at its northern terminus with the southern end of the pipe line system of the Kansas Natural Gas Company, and with the lines of that company constitute one entire gas transportation system extending from the south-
18 ern terminus thereof in the said Hogshooter Field to the Cities of Topeka, St. Joseph and Kansas City. Neither The Marnet nor Kansas Companies are producers of gas but purchase all the gas which is piped out of Oklahoma through the said system, from the owners of the gas wells, who sell and deliver the same to the Kansas Company into the said lines operated by it, such delivery being at the mouth of the wells producing the gas. The owners of the wells producing this gas deliver the same into the pipe lines of The Marnet Company now operated by the Kansas Company, at such confined pressure of the gas as they please not exceeding however 300 pounds to the square inch. The present highest confined pressure of the gas in the wells in the said Hogshooter Field varies from 340 pounds to 510 pounds to the square inch, but the gas is not turned into the said pipe lines at over 300 pounds, which pressure forces and carries the gas through the said pipe line northwardly across the said State line and beyond the same until by the friction on the lines and the lost energy in carrying or forcing the gas along, such initial pressure spends itself and is reduced *to* 90 to 125 pounds to the square inch, at what is known as the Grabham Station, a battery of compressing or forcing engines situate about 13 miles north of the said State line, and about 44 miles north of the southern terminus of the said pipe lines in the Hogshooter Field. The present highest confined pressure of the gas in the said Vanderpool Field is about 24 pounds to the square inch, which pressure forces and carries the gas through
19 the said pipe lines running out of that field, northwardly across the State line and beyond the same until by the friction in the line and the lost energy in carrying or forcing the gas along such initial pressure spends itself and is reduced to about 16 pounds to the square inch at the said Grabham Station. This Grabham Station consists of a battery of forcing or compressing engines into the intake of which the gas from the Hogshooter field goes at a pressure of from 90 to 125 pounds, from the Vanderpool Field at a pressure of about 16 pounds, from the south Independent Field in Montgomery County, Kansas, at a pressure of from 50 to 85 pounds, and from the north Independence Field in the said County at a pressure of from 40 to 60 pounds. The forcing or compressing engines in the said Grabham Station by the aid of power produced from gas engines driven by internal combustion, force the gas on its way north compressing the same and increasing the confined pressure at the outlet of the said forcing or compressing engines to about 300 pounds, which again forces and carries the gas along the said pipe line system

northwardly until by the friction on the line and the last energy in carrying or forcing the gas along, such pressure at the outlet of the said forcing or compressing engines gradually spends itself and is reduced to a pressure varying from 90 to 125 pounds at what is known as the Petrolia Station, a battery of forcing or compressing engines situate about 48 miles north of the Grabham Station. This gas enters the intake of the said engines of the Petrolia Station at a pressure varying from 90 to 125 pounds, and these engines by the
20 aid of power generated by a battery of internal combustion gas engines forces the gas still further on its way north again compressing the same and again increasing the confined pressure at the outlet of the said engines to about 300 pounds, which forces and carries the gas along the said pipe line system northwardly until by the friction on the line and the lost energy in carrying or forcing the gas along, such pressure at the outlet of the said engines again gradually spends itself and is again reduced to a pressure varying from 90 to 125 pounds at what is known as the Scipio Station, a third battery of forcing or compressing engines situate about 48 miles north of Petrolia Station. The gas enters the intake of the forcing engines at the Scipio Station at a pressure varying from 90 to 125 pounds, and these engines by the aid of power generated by a battery of internal combustion gas engines, force the gas still further on its way north again compressing the same and again increasing the confined pressure to 300 pounds, which forces and carries the gas northwardly to the Cities of Topeka, St. Joseph, and Kansas City and intermediate cities, the points of consumption. These forcing or compressing engines are the "pumps" erroneously called such and so referred to by the defendants in the above entitled cases. These answering complainants deny and say it is not true that these engines "pump out" the wells producing the gas which the Kansas Company is transporting out of Oklahoma, or that the said engines in any way increase the natural flow of the gas from the wells from which it is being sold and delivered by the owners thereof into the pipe lines of
21 The Marnet Company (now operated by the Kansas Company). They aver and state the fact to be that all the gas delivered by the owners thereof into the pipe lines owned by the Marnet Company and operated by the Kansas Company, flows from the wells by the natural confined pressure of the gas therein, and not by means of any artificial pressure or suction or action whatsoever, applied either by the owners of the wells or by these complainants, or any of them, either through the operation of their said lines or their said compressure stations, or in any other way, by which such natural flow and pressure of the gas in the said wells is stimulated or increased. They further charge that there is not today in the State of Oklahoma a single gas well from which the flow of gas is "pumped out" forced out or in any way increased or stimulated by artificial means. They further aver and declare that the said compressor or forcing stations are absolutely necessary integral and component parts of the pipe line system aforesaid, as much so as the pipe lines themselves, and that without the use of the said stations the said system could not be operated, and without them gas in practical

quantities could never be piped to the Cities of Kansas City, St. Joseph, or Topeka, and intermediate points. They further aver that the pipe line systems transporting gas from West Virginia to the Cities of Pittsburg, Pennsylvania, Cleveland, Cincinnati, Columbus, Akron and Toledo, Ohio, and from Pennsylvania to the Cities of Ashtabula and Conneaut, Ohio, and Jamestown, New York, as well as all other gas transporting systems in the United States and Canada are operated with similar compress stations and without them such lines would be worthless and useless, and would wholly fail
22 to supply the said cities with gas. They further say that the use of such compress or stations is the usual, customary and universal method of forcing and propelling the gas along and through the pipe lines to the place of consumption thereof. They say also that the gas pipe lines running from the Collinsville Field, about 15 miles south of the Hogshooter Field, to Oklahoma City and Guthrie cannot be successfully operated this coming winter without the use of a similar compressing station, and that the Oklahoma Natural Gas Company the owner of the said pipe line is now with the knowledge, consent and approval of the respondents in the above entitled suits, building and constructing such a compressor or forcing station about 40 miles southwest of the northeast terminus of its pipe line in the said Collinsville Field. They further say that the gas which the Kansas Company is now transporting through the lines of The Marnett Company, nor operated by it, is substantially all produced from wells in a pure gas sand and not from a sand or rock producing both oil and gas, and that the production of such gas even from the sands or rocks in which both oil and gas is found, and even in the quantities in which the same is produced, sold and delivered by the owners thereof into the pipe lines of The Marnett Company, now operated by the Kansas Company does not and will not cause the said sands, rocks or strata to disintegrate or be in any way injured and aver and charge that even if such results follow, which these answering complainants deny, it is the fault and wrong, if it be such, of the producers and owners of the wells and gas, who sell and de-
23 liver the same into the said pipe line system and not of either the Kansas or The Marnett Companies. Neither the Kansas nor the Marnet Companies being producers of gas, but only transporters thereof after the sale and the delivery of the same into their said lines. That the said pipe lines of The Marnet Company, now operated by the Kansas Company, were constructed and are now being operated wholly and solely for the transportation and carriage of natural gas from the State of Oklahoma into Kansas. They do no local traffic within the State of Oklahoma. They are therefore both lines and compressor or forcing stations free from interference or restraint by the officers of the State, or any of its citizens and beyond the power of the State, whether it or its officers, the defendants, attempt such interference or restraint or power under any pretended Statute of the State or any pretended common law right, rule of action or unwritten law, and these answering complainants aver and charge that there is no valid statute and no such common law right, rule of action or unwritten law of Oklahoma, and that the

defendants in the above entitled suit are acting solely to harass, hamper, impede, and if possible, wholly prevent the transportation of natural gas beyond the borders of the State of Oklahoma, and not because the complainants have broken or failed to keep, or will break or fail to keep, or intend to break or fail to keep any prestended Statute, common law right, rule of action or unwritten law of the State of Oklahoma.

24 3rd. These answering complainants deny that the opinion of the Supreme Court in this case holds that a State may control the method by which gas is taken from wells in the State and transport it through the State by forbidding the use of pumps; they deny that the opinion of the Supreme Court will bear any such construction or has any such force or meaning. They aver as a fact that the compressing and forcing engines which the Marnet and Kansas Companies operate do not in any way increase or expedite the natural flow of the gas from the wells producing the same, and that said compressor stations are an essential and necessary part of the system of interstate transportation of natural gas, as much so as the pipe lines themselves, and without such stations it is impossible to conduct the interstate business in the transportation of natural gas, and the modification of the decree herein so as to in any way prohibit or interfere with the operation of such compressor station would nullify the decree of the Supreme Court in this case and violate the provisions of Section 8, of Article 1 of the Constitution of the United States, and if this Court modifies the decree so as to forbid the use of compressor stations upon complainant's lines the respondents will succeed as effectually in preventing the interstate transportation of natural gas a- though this Court had forbid the laying of the lines themselves.

25 4th. These answering complainants deny that the opinion of the Supreme Court in this case holds that the State of Oklahoma may prohibit the use of pumps or other artificial means in the transmission of gas through interstate gas lines, and avers that the said opinion formulates and lays down the direct opposite rule, and further avers that the compressor or forcing engines of the Kansas and Marnet Companies are integral, composite and necessary parts of interstate gas pipe lines, and being such it is beyond the power of the State of Oklahoma, or any of its official-, or of the respondents herein acting or claiming to act through any pretended Statute, common law right, rule of action or unwritten law to restrain, prevent or forbid the use of said engines, and that said Chapter 67 as modified by the Act approved March 27, 1909 (Article 2 in Chapter 26, Session Laws of 1909, Article 3, Chapter 75, compiled laws of Oklahoma, 1909, Snyder), Section 11 is invalid, unconstitutional, null and void as violative of Section 8, Article 1 of the Constitution of the United States.

5th. Further answering complainants deny that the opinion of the Supreme Court in effect holds that Chapter 67, as modified by the Act of March 17, 1909, prohibiting the use of gas in such quantities as may effect gas pipe lines corporations, gas consumers and gas producers in the same district by reason of taking undue quantities

of gas for more than its proportionate share, consideration being due for the size, capacity and pressure, facilities and powers of persons similarly situated is a valid matter for State regulation, and
26 allege that the force and effect of the decision of the Supreme Court is directly to the contrary, and further allege that said Chapter 67, as modified by the Act of March 17, 1909, is unconstitutional, null and *b*oid and violative of complainants' rights under Section 8, Article 1, and the Fourteenth Amendment of the Constitution of the United States, and aver that the Kansas and Marnet Companies are solely transporters of gas which is produced by the owners of the wells and sold by them to the Kansas and Marnet Companies, and charge that they have a constitutional right to buy any quantity of gas which is offered to them by the owners thereof, and having bought the same have the right to transport the same out of and from the State of Oklahoma in such quantities as their facilities will afford, and without let or hindrance from the State of Oklahoma, or any of the officials thereof, and they further aver that the owners of gas wells in Oklahoma have the constitutional right to produce gas therefrom, have the right to take from their wells the entire and gross output thereof and to sell and dispose of the same for commercial purposes, and that the State of Oklahoma, and none of its officials, have any right to interfere with such production, sale and disposal.

6th. These complainants deny that the Supreme Court, in its opinion, in this case holds that an interstate trader, without being given the power of eminent domain and without compensation might confiscate the property of the State, to-wit, the highways thereof by placing its pipe lines in the highways without consent of the
27 State and against its will, and aver that no construction can be drawn from the said opinion. On the contrary they aver, as the opinion reads, that the State of Oklahoma, while granting the use of its highways to domestic gas companies, even granting them the use to occupy such highways longitudinal, may not withhold and refuse such use to companies engaged in interstate transportation of gas. They repeat the averments in their original Bills filed herein that they will not lay their lines longitudinally to public highways, but must necessarily cross them, and in such crossing their lines will be laid in such a way as not in any way to interfere with, endanger, or embarrass travel on such highways, and always in as well, if not better way, than the local lines are laid across such roads, and complainants further aver that the interpretation put upon the opinion of the Supreme Court by the respondents herein renders said law, as so interpreted, discriminatory, unreasonable and therefore unconstitutional.

7th. They aver that the lines of The Marnet Company, operated by the Kansas Company, are used wholly in interstate commerce and are instruments of interstate traffic in natural gas, and being such, cannot be interfered with in any way by the respondents herein whether they claim to act under Chapter 67, or any other Statute of Oklahoma, or any common law right, rule of action or unwritten law of the State, and aver that such lines are wholly and exclusively

within the protection and control of the Federal Constitution and laws, and above and beyond the authority, jurisdiction and power of the State of Oklahoma, or of any of its officials, and allege
28 that said opinion holds that the defendants are enjoined from bringing any suit under any Statute, common law right, rule of action or unwritten law whatever.

8th. These complainants further answering say that the matters and things stated in the 8th paragraph of said motion do not state facts sufficient to entitle the respondents to any relief thereunder; that the decree entered herein in all of said respects conforms to and is in line with the decision of the Supreme Court in this case.

9th. Further answering the motion these complainants aver that the Supreme Court in its decision held that interstate commerce in natural gas must be free and unrestrained, and that no State has any right to impede, interfere with, restrain or prohibit the same, and that the character and purpose of the Oklahoma Statute was to hinder, restrain and prohibit interstate commerce in natural gas, and they challenge the good faith of the respondents in moving to amend this decree, and aver that their purpose in so doing is, if possible, to harass, hamper and restrain the transportation of natural gas, and the operation of the pipe lines of The Marnet and Kansas Companies, that carriage of gas through the same will be wholly prevented, and to carry out the original character and purpose of the Oklahoma Statute, as declared by the Supreme Court, and to do indirectly what the Supreme Court in its said opinion has said they cannot do directly or indirectly.

29 10th. These answering complainants aver that the motion of the respondents herein to modify this injunction decree places in issue the constitutionality or unconstitutionality of Sections 5, 6, and 7 of said Chapter 67, and they now pray this Court to call in an additional District Judge and a Circuit Judge in accordance with the Act of Congress to pass upon the issues herein.

Wherefore, the complainants pray:

1. That they be granted time and an opportunity in which to take testimony to substantiate the facts alleged in the foregoing answer and refute the allegations of the respondents' motion.

2. That the motion of the respondents herein be denied and dismissed.

3. That the decree affirmed by the Supreme Court remain without modification.

4. That the mandate of the Supreme Court in said cause be spread upon the records of this Court.

E. L. SCARRITT,
JOHN J. JONES,
EUGENE MACKEY,
Solicitors for Complainants.

30 STATE OF OKLAHOMA,
County of Muskogee, ss:

Be it remembered, That on this 31st day of July, A. D. 1911, before me, a Notary Public within and for said County and State, personally appeared Eugene Mackey, who being by me first duly af-

firmed according to law, did depose and say that he is the President of the Kansas Natural Gas Company and of The Marnet Mining Company, and that the statements made and set forth in the foregoing answer are true, as he verily velieves.

EUGENE MACKEY.

Subscribed and affirmed to before me this 31st day of July A. D. 1911.

[SEAL.] GEO. H. LESLEY,
Notary Public.

31 Endorsed on back: United States Circuit Court, Eastern District of Oklahoma. No. 856. Kansas Natural Gas Co. v. Charles N. Haskell, et al. No. 857. The Marnet Mining Co. vs. Charles N. Haskell, et al. No. 858. A. W. Lewis v. Charles N. Haskell, et al. Consolidated. No. 856. Answer of Complainants to respondents' motion to modify decree. Filed in open court Jul-31, 1911. L. G. Disney, Clerk U. S. Circuit Court, Eastern Dist Okla.

32 And thereafter on the said 31st day of July, 1911, said defendants Charles N. Haskell, et al., filed the affidavit of Harry H. Breene, Chief Deputy Oil and Gas Inspector of the State of Oklahoma, in support of said motion to modify said decree, which said affidavit was in words and figures following, to-wit:

33 In the Circuit Court of the United States for the Eastern District of Oklahoma.

No. 856.

KANSAS NATURAL GAS COMPANY, Plaintiff,
vs.
CHARLES N. HASKELL et al., Defendants.

No. 857.

THE MARNET MINING COMPANY, Plaintiff,
vs.
CHARLES N. HASKELL et al., Defendants.

No. 858.

A. W. LEWIS, Plaintiff,
vs.
CHARLES N. HASKELL et al., Defendants.

Consolidated. No. 856.

STATE OF OKLAHOMA,
County of Muskogee, ss:

Affidavit in Support of Motion to Modify Decree.

Harry H. Breene being duly sworn, upon oath says:
That he is the Chief Deputy Oil & Gas Inspector of the State of

Oklahoma and has been such since the creation of the office. That at the request of the Attorney General of the State of Oklahoma, in this month, he has made a careful investigation of the conditions in the following gas fields of Oklahoma:

The Copan Field in the neighborhood of Copan, Oklahoma;

The Hogshooter Field in Washington and Nowata Counties, Okla;

The Collinsville Field in Tulsa and Rogers Counties, Oklahoma;

The Dewey Field in Washington County, Oklahoma.

The Wann Gas field is ordinarily included under the
34 name of Copan field, the two fields running practically together. That the principal gas fields in Oklahoma are the Collinsville, Hogshooter and Copan. That he found that at this time in the Copan gas field there is a rock pressure of 24 or 25 pounds to the square inch. That the original rock pressure in this field was as high as 450 to 530 pounds. That the volume of the whole field at the present time does not exceed 100,000,000 cubic feet of gas per day, whereas a year ago with much fewer wells the volume was over 300,000,000 cubic feet per day. That at the present time there is only 125 wells in that field, whereas a year ago there was in the neighborhood of 60 wells or one-half that number, but the rapid decline in this particular field has been on account of the large draw from these wells by the use of pumps or by allowing the wells to flow freely and by an utter disregard on the part of the pipe line companies, to a protective pressure on the wells. Each company vies with the others to see how much gas they can get from the fields. That if the wells are allowed to flow off at their potential capacity because of the presence of salt water, they will be immediately destroyed by the salt water coming up through the rock and "drowning" the wells. If pumps are used, they will relieve the wells from the rock pressure by creating a vacuum and their effect is the same as allowing the well to flow at its potential capacity, except that the use of pumps is an exaggeration of the use of the wells flowing freely, in that friction will not allow the wells to flow quite as fast as they will flow where the pumps create a vacuum. For this reason it is necessary to preserve the protective pressure on the wells in order that they may last any length of time. The provision of the Kansas law prohibiting the use of more than fifty per
35 cent of the potential capacity of the well is utterly inadequate to the circumstances of the case in Oklahoma and has proven to be entirely inadequate to the situation in Kansas. That no exact figure can be named of what amount of potential capacity can be used, this depending upon the amount of salt water and the ease with which same will come out of the rock. Where little salt water is found a greater daily capacity may be taken, and where much salt water is found, a less daily capacity may safely be taken, in order to have a well last any length of time. Where a field shows a high rock pressure and wells last for a year or more without showing salt water, as much as fifty per cent draw may safely be taken. Where, as in the Hogshooter field, salt water will show in a month or less, as well as in all the other known fields in Oklahoma where

the same conditions exist, it is not safe to take more than fifteen per cent as the conditions originally were, but the number of gas lines in the field has created such a great demand for gas and the supply has so disappointed the expectations that in order that the business may continue, it will probably be necessary to allow as much as twenty per cent of the daily capacity to be taken, although this amount is itself more than it should be.

The pipe lines, principally the large eighteen inch interstate pipe lines, have operated in total disregard of section 11 of the act approved March 27, 1909, in that by the operation of pumping stations north of the Kansas line without any consideration being had for the size, capacity, pressure, facility and powers of all other gas line corporations and gas consumers and gas producers in the same gas district which may be affected by the use of the pumps, they have taxed the pumps to the utmost practical capacity with
36 the consequent result of allowing a very large inflow of salt water into the wells and have not kept a protective pressure on the wells to keep out salt water. As the result of this failure to observe section 11 aforesaid, this field will be entirely abandoned as far as commercial gas within the next twelve months, except by the use of pumps some little gas may be pumped out but affiant is of the opinion that not more than 10,000,000 cubic feet of gas will be available in said field at the end of a year from this date, whereas a year ago the potential daily capacity as aforesaid, was 300,000,000 cubic feet per day. That the flooding of the wells by salt water actually operates to the extermination and destruction of the well, so that gas that has not been taken out can never thereafter be taken out; and that, therefore, a retention of the protective pressure on the well is absolutely necessary for the conservation and use of the gas in the well. The method followed by the companies has necessitated the flowing off of a large amount of water out of the wells each morning; in some instances taking as much as 20 minutes. Together with this water a great amount of gas is wasted in eliminating the water; and finally it is this affiant's opinion that the destruction of gas in this field, although largely caused by allowing gas to escape, yet the amount of destruction caused by this source is not to be considered in connection with the destruction caused by removing the protective pressure from the wells and the "drowning" thereof as aforesaid. For the purpose of illustration affiant attaches to this affidavit a statement marked "Exhibit A" which consists of readings from wells which were taken at random through the field for the purpose of getting a knowledge of
37 the conditions, which affiant makes a part of this affidavit.

The Dewey gas field is very small. There are a few other scattered gas fields northeast of Dewey, Oklahoma. The entire volume does not exceed 20,000,000 cubic feet from about 15 different wells. The pressure ranging from 130 to 475 pounds, making an average of about 302. The initial rock pressure in this field was something more than 500 pounds and the gas in this field will be entirely depleted by the cement plant at Dewey, which daily consumes about one-quarter of the entire output of the field.

In the Hogshooter field the average pressure for wells tested and gauged on July 12 and 13, 1911, is 355 pounds. The original rock pressure of these wells was from 535 to 550 pounds and the average pressure a year ago would exceed 525 pounds. This was the average and this is the average today in which the large 18-inch interstate pipe line of the Kansas Gas Company, the Iola Portland Cement Company, the Marnet Mining Company, the Kansigan Gas Company, the Wichita Gas Company and the Quawpaw Gas Company. That all of these lines have been let into said field under the protection of the preliminary injunction orders of this court, and that it is the presence of these particular pipe lines which has reduced the pressure as aforesaid. The said pipe lines did not get into operation in said field until last winter first. They have reduced the rock pressure, in less than one season, from 550 to 355 pounds. They have not reduced the volume of available gas because of the very large number of new wells drilled in the field. The volume is greatly increased by the drilling of very many new gas wells. This field covers two townships. It has 158 gas wells with an average of 8,000,000 cubic feet per well, being an entire output for the field of 1,264,000,000 a day.

38 Notwithstanding this big increase in volume for the last year in the field, in the opinion of affiant it is a safe estimate that the gas for the entire field has decreased one-third, and last winter when the draw upon the field by the use of the heavy pumps of the 18-inch lines aforesaid, the rock pressure throughout the field decreased one pound per day. Originally very little salt water showed in these wells. But now that the pressure is less than 400 pounds, they all develop large quantities of salt water in less than one month's time from initial use, and it is affiant's opinion that when the pressure gets below 100 pounds the quantity of water in the field will be so great as to render them practically useless, and, therefore, at the present rate of consumption it is likely that in a year and a half this field will be destroyed. The rock pressure in the extreme north end of this field where the draw is light, averages about 400 pounds. It is for a few wells only, and, therefore, does not affect the general average.

The Collinsville gas field is not large; in it operate mostly the Henry Gas Company and G. T. Braden & Company. The volume of the entire field will not exceed 75,000,000 cubic feet, and the rock pressure does not exceed 364 pounds. There have been no pumps used on this field, the development of which has been small; the field extends over quite an area, and as long as the pumps and large lines are kept out of the field, it is likely to last for some time.

The present condition of the Hogshooter field with its rapid decline in rock pressure, rapid development of water in the presence of the large lines and effect of pumps north of the Kansas line, proves conclusively to the mind of your affiant and his experience in comparison with the consideration of the Collinsville field

39 which has no large lines, although it supplies the cities of Oklahoma City, Shawnee and Guthrie and has in it no pumps, that a rigid enforcement of Section 11 and the exclusion

of gas companies and gas pipe lines who operate pumps north of the Kansas line or elsewhere in the disregard of needs and facilities of neighboring gas consumers, is an absolute necessity for the preservation of Oklahoma gas and is a practical solution of most of the difficulties; but if the injunction be modified so as to allow the putting into effect of said Section 11, that a large part of the present destruction may be terminated in a short time.

The said "Exhibit A" contains illustrations and measurements not only in the Copan but in the Hogshooter and Collinsville fields as well.

H. H. BREENE.

Subscribed and sworn to before me this 31st day of July, A. D. 1911.

[SEAL.] GEORGE D. WILLHITE,
Notary Public.

My Commission Expires May 10, 1915.

40 EXHIBIT "A."

Gas Report to Attorney General West.

Copan Gas Field:

D. W. Thomason farm. Well No. 2, Section 23-29-13.
Well completed November 23, 1909.
Original volume, 22,215,960 feet.
Original rock pressure 450 lbs.
Volume July 11th, 1911, 2,000,000.
Rock pressure 24 lbs.

Andy Smith farm. Well #2, Section 22-29-13.
Well completed December 31st, 1909.
Original Volume 26,472,320 feet.
Original Rock Pressure 450 lbs.
Volume July 11th, 1911, 1,500,000.
Rock Pressure 25 lbs.

J. Jones farm. Well #2, Section 22-29-13.
Well completed February, 1910.
Original Volume 38,000,000 feet.
Original rock pressure 365 lbs.
Rock pressure July 11th, 1911, 30 lbs.

C. E. Goodwin. Well #1, Section 27-29-13.
Well completed in December, 1908.
Original volume 45,000,000.
Original rock pressure 495 lbs.
Rock pressure July 11th, 1911, 30 lbs.

Wichita Gas Company, for this field, give the following average on rock pressure:

1908	500 lbs.
1909	495 lbs.
Jan. 15th, 1910	400 lbs.
Mar. 25th, 1910	350 lbs.
July 1st, 1910	280 lbs.
Sept. 1st, 1910	185 lbs.
July 1st, 1911	30 lbs.

41 Out of this field the following companies are taking gas:

Kansas Natural Gas Company,
Iola Portland Cement Co.,
Kasigan Gas Company,
The Wichita Gas Co.,
Owen & Connelly, and
The Quapaw Gas Co.

Hogshooter Gas Field:

Roy Miller farm, Section 31-25-13.
Well completed Jan. 24th, 1911.
Original volume 16,248,000.
Original Rock Pressure 442 lbs.
Volume July 11th, 1911, 12,000,000.
Rock pressure 353 lbs.

Florence Miller farm, Section 32-25-14.
Well completed Feb. 7th, 1911.
Original volume 20,175,000.
Original Rock Pressure 430 lbs.
Rock pressure, July 13, 1911, 353 lbs.

Orena G. Davis farm, Section 33-25-14.
Well completed February, 1910.
Original volume, 25,000,000.
Original Rock pressure 545.
Volume July 13th, 1911, 10,000,000.
Rock pressure 373 lbs.

Frances Carter farm, Section 29-25-14.
Well completed March 11, 1911.
Original volume 19,312,000.
Original Rock pressure 410 lbs.
Rock pressure July 13th, 1911, 348 lbs.

42 Jennie Carter farm, Sections 30-25-14.
Well completed March 24th, 1911.
Original volume 25,000,000.
Original Rock pressure 398 lbs.
Rock pressure July 13th, 1911, 350 lbs.

Kate Lowry farm, Section 20-25-14.
Well completed March 22, 1911.
Original volume 31,500,000.
Original Rock pressure 404 lbs.
Rock pressure 350 lbs., July 13th, 1911.

Hogshooter Gas Field—Sheet #2:

Howard Miller farm, Section 6-24-14.
Well completed February 23, 1911.
Original volume 28,200,000.
Original rock pressure 425 lbs.
Rock pressure July 15th, 1911, 360 lbs.

In township- 24 and 25, which comprises about all this field there are 158 wells, with a total volume of 1,264,000,000 cubic feet.

43 Collinsville Gas Field:

The original rock pressure of this field was 540 pounds. At the present time the average pressure for six wells, in the following sections is 360 lbs.

Sanders Farm, Section 3-21-14.
Rock pressure 358 lbs.

W. A. Quallis farm, Section 10-21-14.
Rock pressure 342 lbs.

Dotty Bussy farm, Section 16-21-14.
Rock pressure 363 lbs.

William Johnstone farm, Section 9-21-14.
Rock pressure 371 lbs.

May Johnstone farm, Section 8-21-14.
Rock pressure 363 lbs.

None of these wells have ever been turned into the line, and the decline from the original rock pressure, 540 lbs., to this average of 360 lbs., is caused by the general draw from other wells in the field that are connected to the pipe line.

44 Endorsed on back: Consolidated No. 856. In the United States Circuit Court for the Eastern District of Oklahoma. No. 856. Kansas Natural Gas Company, Plaintiff, vs. Charles N. Haskell et al., Defendants. No. 857. The Marnet Mining Company, Plaintiff, vs. Charles N. Haskell et al., Defendants. No. 858. A. W. Lewis, Plaintiff, vs. Charles N. Haskell et al., Defendants. Affidavit in support of Motion to Modify Decree. United States Circuit Court Eastern Dist. Okla. Filed Jul- 31, 1911. L. G. Disney, Clerk.

45 Whereupon oral argument was made by consent for both plaintiffs and defendants on the demurrer and the cause on the demurrer was by the court taken under advisement. And on the 26th day of October, 1911, thereafter the court made an order and decree overruling said motion to modify, which said decree was in words and figures following:

46 In the Circuit Court of the United States for the Eastern District of Oklahoma.

No. 856.

KANSAS NATURAL GAS Co., Plaintiff,
vs.
CHARLES N. HASKELL et al., Defendants.

No. 857.

THE MARNET MINING Co., Plaintiff,
vs.
CHARLES N. HASKELL et al., Defendants.

No. 858.

A. W. LEWIS, Plaintiff,
vs.
CHARLES N. HASKELL et al., Defendants.

Consolidated # 856.

This cause having been tried before this court and final decree entered in favor of plaintiffs on the 1st day of February, 1911, from which decree an appeal was duly allowed and prosecuted to the Supreme Court of the United States, from which a mandate has been duly issued affirming said final decree entered herein on February 1st, 1911, but providing that either party be at liberty to apply to this court for a modification of the decree insofar as they may deem such modification required to secure conformity to the opinion of said Supreme Court; And the defendants herein having, on the 19th day of July, 1911, filed their motion to modify said final decree and filed affidavit in support thereof on July 31st, 1911, and the plaintiffs having filed their motion in the nature of a demurrer and their answer to said motion to modify, together with a motion to spread the mandate of the Supreme Court upon the records of this court, and the court having heard oral argument both in support of and against the said motion to modify the decree, and without the hearing of any proof in support of or against the granting of said motion, took the matter under advisement, treating the plaintiffs' answer
47 as in the nature of a demurrer to said motion to modify the decree.

And now on this 26th day of October, 1911, upon consideration thereof, and upon consideration of the entire record in this cause up to the entry of the final decree now sought to be modified, and of the opinion of the Supreme Court.

It is ordered, adjudged and decreed That the motion of defendants, filed herein on the 19th day of July, 1911, to modify the final decree rendered herein on the 1st day of February, 1911, be and the same is hereby overruled.

It is further ordered That the mandate of the Supreme Court of the United States, in said cause upon appeal, be spread upon the records of this court.

The defendants herein having given notice in open court of appeal to the Supreme Court of the United States, as provided by law, it is ordered That said appeal be allowed and that the amount of the cost bond required herein be fixed at Five Hundred Dollars.

Dated at Muskogee, in the Eastern District of Oklahoma this 26th day of October, A. D. 1911.

RALPH E. CAMPBELL,
District Judge, Sitting as Judge of the Circuit Court of the United States for the Eastern District of Oklahoma.

Endorsed: Consolidated No. 856. In the Circuit Court of the United States for the Eastern District of Oklahoma.—Kansas Natural Gas Co., Plaintiff vs. Charles N. Haskell et al., Defendants. The Marnet Mining Co., Plaintiff, vs. The Same, Defendants, A. W. Lewis, Plaintiff, vs. The Same Defendants. Decree—Filed Oct. 26, 1911, L. G. Disney, Clerk.

48 Thereafter and on the 6th day of December, 1911, the Court set aside the order entered on October 26th, 1911, and in lieu thereof entered the following—viz:

49 In the Circuit Court of the United States for the Eastern District of Oklahoma.

No. 856.

KANSAS NATURAL GAS CO., Plaintiff,
vs.
CHARLES N. HASKELL et al., Defendants.

No. 857.

THE MARNET MINING CO., Plaintiff,
vs.
CHARLES N. HASKELL et al., Defendants.

No. 858.

A. W. LEWIS, Plaintiff,
vs.
CHARLES N. HASKELL et al., Defendants.

Consolidated # 856.

Now on this 6th day of December, 1911, come the parties in the above consolidated cause, and it being made to appear to the court that there is some doubt as to the meaning of the order entered herein on October 26th, 1911, over-ruling defendants' motion to modify the decree herein, in order to remove such doubt the court of its own motion doth hereby set aside and annul said order of October 26, 1911, and in lieu thereof doth as of this day enter herein the following order, namely:

This cause having been tried before this court and final decree entered in favor of plaintiffs on the 1st day of February, 1911, from which decree an appeal was duly allowed and prosecuted to the Supreme Court of the United States, from which a mandate has been duly issued affirming said final decree entered herein on February 1st, 1911, but providing that either party be at liberty to apply
50 to this Court for a modification of the decree insofar as they may deem such modification required to secure conformity to the opinion of said Supreme Court. And the defendants herein having, on the 19th day of July, 1911, filed their motion to modify said final decree and filed affidavit in support thereof on July 31st, 1911, and the plaintiffs having filed their motion in the nature of a demurrer and their answer to said motion to modify, together with a motion to spread the mandate of the Supreme Court upon the records of this court, and the court having heard oral argument both in support of and against the said motion to modify the decree, and without hearing or considering any evidence in support of or against the granting of said motion and without considering any affidavits or exhibits thereto filed herein, took the matter under advisement, treating the

plaintiffs' pleadings as in the nature of a demurrer to said motion to modify the decree; it being stated by the court at the time, and understood by all parties, that no evidence would be considered by the Court in determining the demurrer but that in case the demurrer was overruled the court would set a day for the hearing of evidence from both sides.

And now on this 6th day of December, 1911, upon consideration thereof, and upon consideration of the entire record in this cause up to the entry of the final decree now sought to be modified, and of the opinion of the Supreme Court,

It is ordered, adjudged and decreed That the motion of defendants, filed herein on the 19th day of July, 1911, to modify the
51 final decree rendered herein on the 1st day of February, 1911, be and the same is hereby over-ruled.

It is further ordered That the mandate of the Supreme Court of the United States, in said cause upon appeal, be spread upon the records of this court.

The defendants herein having given notice in open court of appeal to the Supreme Court of the United States, as provided by law,

It is ordered That said appeal be allowed and that the amount of the cost bond required herein be fixed at Five Hundred Dollars.

The plaintiffs at the time objected and excepted to so much of the order of the Court as granted the defendants an appeal herein.

Dated at Muskogee, in the Eastern District of Oklahoma, this 6th day of December, A. D. 1911.

RALPH E. CAMPBELL,
District Judge, Sitting as Judge of the Circuit Court of the United States for the Eastern District of Oklahoma.

Endorsed: Consolidated No. 856. In the Circuit Court of the United States for the Eastern District of Oklahoma. No. 856. Kansas Natural Gas Co., Plaintiff, vs. Charles N. Haskell et al., Defendants. No. 857. The Marnet Mining Co., Plaintiff, vs. Charles N. Haskell et al., Defendants. No. 858. A. W. Lewis, Plaintiff, vs. Charles N. Haskell et al., Defendants. Order. Filed in open Court Dec. 6, 1911, L. G. Disney, Clerk U. S. Circuit Court Eastern Dist. Okla.

52 And thereafter on the same day, December 6th, 1911, defendants filed an application for appeal, and assignment of errors, which were in words and figures following:

53 In the Circuit Court of the United States for the Eastern District of Oklahoma.

Consolidated No. 856.

No. 856.

KANSAS NATURAL GAS COMPANY, Plaintiff,

vs.

CHARLES N. HASKELL, a Citizen of the State of Oklahoma, a Resident of the County of Muskogee Therein; Charles West, a Citizen of the State of Oklahoma and a Resident of the County of Garfield Therein, and John J. Shea, John H. Kane, and Frank B. Burford, Citizens of the State of Oklahoma and Residents of the County of Washington Therein; J. E. Love, A. P. Watson, and J. J. McAlester, Citizens of the State of Oklahoma and Residents Respectively of the Counties of Woodward, Pittsburg, and Pottawatomie Therein, and Pete Hanraty, a Citizen of the State of Oklahoma and a Resident of the County of Pittsburg Therein, Defendants.

No. 857.

THE MARNET MINING COMPANY, Plaintiff,

vs.

THE SAME, Defendants.

No. 858.

A. W. LEWIS, Plaintiff,

vs.

THE SAME, Defendants.

Application for Appeal.

54 The above named defendants, conceiving themselves aggrieved by the decree made and entered by the above named court, in this cause on the 6th day of December, A. D., 1911, by which decree the motion to modify the final decree heretofore entered in said cause on February 1, 1911, was overruled; which said motion was filed herein on July 19, 1911, and was presented to the court on July 31, 1911, do hereby appeal to the Supreme Court of the United States, for the reasons set out in the assignments of error, which are filed herewith; and said defendants pray that this petition for said appeal may be allowed, and a transcript of the record, proceedings, and papers upon which the decree is made, duly authenticated, may be sent to the Supreme Court of the United States.

Dated this 6th day of December, A. D., 1911.

CHARLES WEST,
Attorney General of the State of Oklahoma, Defendant and Solicitor for His Co-defendants Herein.

W. C. REEVES,
Defendants' Solicitor.

Appeal allowed and cost bond fixed at ($500.00) Five hundred Dollars this 6th day of December, A. D., 1911.

RALPH E. CAMPBELL,
District Judge, Sitting as Judge of the Circuit Court of the United States for the Eastern District of Oklahoma.

55 Endorsed on back: Consolidated No. 856. In the Circuit Court of the United States for the Eastern District of Oklahoma. Kansas Natural Gas Co., Plaintiff, vs. Charles N. Haskell, et al., Defendants. The Marnet Mining Company, Plaintiff, vs. The Same, Defendants. A. W. Lewis, Plaintiff, vs. The Same, Defendants. Application for Appeal. Filed in Open Court Dec. 6th, 1911. L. G. Disney, Clerk U. S. Circuit Court, Eastern Dist. Okla.

56 In the Circuit Court of the United States for the Eastern District of Oklahoma.

Consolidated No. 856.

No. 856.

KANSAS NATURAL GAS COMPANY, Plaintiff,
vs.
CHARLES N. HASKELL, a Citizen of the State of Oklahoma and a Resident of the County of Muskogee Therein; Charles West, a Citizen of the State of Oklahoma and a Resident of the County of Garfield Therein, and John J. Shea, John H. Kane, and Frank B. Burford, Citizens of the State of Oklahoma and Residents of the County of Washington Therein; J. E. Love, A. P. Watson, and J. J. McAlester, Citizens of the State of Oklahoma and Residents Respectively of the Counties of Woodward, Pittsburg, and Pottawatomie Therein, and Pete Hanraty, a Citizen of the State of Oklahoma and a Resident of the County of Pittsburg Therein, Defendants.

No. 857.

THE MARNET MINING COMPANY, Plaintiff,
vs.
THE SAME, Defendants.

No. 858.

A. W. LEWIS, Plaintiff,
vs.
THE SAME, Defendants.

Assignments of Error.

57 The defendants above named pray an appeal to the Supreme Court of the United States from the decree of this

Court rendered herein on the 6th day of December, 1911, overruling defendants' motion heretofore filed herein on the 19th day of July, 1911, and presented to the court on July 31st, 1911, by which said motion defendants sought to have modified the final decree heretofore entered herein on the 1st day of February, 1911, and assign for error:

1. That the court erred in overruling defendants' motion to modify the final decree, heretofore entered herein on February 1, 1911, which said motion was filed herein on July 19, 1911, and presented and heard by the court on July 31, 1911.

2. The court erred in refusing to modify that portion of the decree which finds, adjudges, and decrees that all of Chapter 67 of the Session Laws of Oklahoma, 1907-1908 passed and enacted by the Legislature of the State of Oklahoma and approved by the Governor of said State on the 21st day of December, 1907, is unreasonable, unconstitutional, invalid and void and of no force and effect whatever.

3. The court erred in refusing to modify said decree, excepting sections five, six and seven of said Chapter 67, and in refusing to decree said sections five, six and seven to be constitutional and valid and in full force and effect.

4. The court erred in refusing to modify that portion of the decree which restrains defendants and each and every of them, their representatives, agents, servants, attorneys, workmen and employees and all other persons whomsoever, advised, inspired, influenced, incited or prompted by them or either of them, from in any way interfering with the laying, building and construction of plaintiffs' pipe lines, or from in any manner instituting, prosecuting, or
58 conducting any suits or suing out any writs of process, in any of the state courts of the State of Oklahoma, against the plaintiffs or anyone of them, for the purpose of restraining, enjoining or interfering with either of them, in the laying, building, construction, maintenance or operation of any gas pipe line, either under the authority of said Chapter 67 of the Session Laws of Oklahoma, 1907-1908, or under any common law right, rule of action, or unwritten law of the State of Oklahoma.

5. The court erred in refusing to modify said decree so as to make it apply only to gas pipe lines which are laid, constructed and maintained in accordance with the provisions of sections five, six and seven of said Chapter 67 of the 1907-1908 Session Laws of Oklahoma, and which in no way violate any of the provisions of said sections five, six and seven of said chapter 67.

6. The court erred in refusing to modify that portion of said decree which restrains defendants from proceeding against plaintiffs because of its violations of the provisions of said Chapter 67, which prohibits the transportation of gas by pumps, through pipe lines under a greater pressure than that authorized by law, and by refusing to modify said decree, to hold that the state may control the method by which gas is taken from wells in the state and transported through the state.

7. The court erred in refusing to modify that portion of said de-

cree which restrains defendants from controlling the use of pumps in the transportation of gas, and by refusing to hold that that portion of said Chapter 67 as amended by the act of March 27, 1909 (Article 2, Chapter 28, Session Laws, 1909), which prohibits the use of pumps or other artificial means in the transmission of gas, when used to the injury of other corporations producing or
59 consuming natural gas in the same gas district, is valid and in full force and effect.

The court erred in refusing to modify said decree to hold that the prohibition of the use of pumps and other artificial means in the transmission of gas is a valid regulation.

9. The court erred in refusing to hold that portion of said Chapter 67 as modified by said act of March 27, 1909, which prohibits the use of gas in such quantities as may effect gas pipe line corporations, gas consumers, and gas producers in the same gas district by reason of taking an undue quantity of gas or more than its proportionate share, due consideration being had for the size, capacity, pressure, facilities and powers of persons similarly situated, was a valid matter for state regulation, and is in full force and effect, and further erred in refusing to modify that portion of the decree which restrains defendants from enforcing said valid portions of said Chapter 67 as amended by said act of March 27, 1909.

10. The court erred in refusing to modify that portion of the decree which enjoins defendants from bringing any suits to prevent plaintiffs from confiscating the property of the state, to-wit, the highways by placing in such highways its gas pipe lines, without the power of eminent domain and without the consent of the estate and against its will.

11. The court erred in refusing to modify that portion of the decree which enjoins defendants from bringing any suit under any statute other than said Chapter 67 as modified by said act
60 of March 27, 1909, common law right, rule of action or unwritten law whatsoever.

All of which is respectfully submitted.

CHARLES WEST,
Attorney General of the State of Oklahoma,
Defendant, and Solicitor for Codefendants;
W. C. REEVES,
Assistant Attorney General,
Defendants' Solicitors.

Endorsed on back: Consolidated No. 856, In the Circuit Court of the United States for the Eastern District of Oklahoma. Kansas Natural Gas Company, Plaintiff, vs. Charles N. Haskell, et al., Defendants. The Marnet Mining Company, Plaintiff, vs. The Same, Defendants. A. W. Lewis, Plaintiff, vs. The Same, Defendants. Assignments of Error. Filed in Open Court Dec. 6, 1911. L. G. Disney, Clerk U. S. Circuit Court, Eastern Dist. Okla.

61 And thereafter on the same day, December 6th, 1911, the defendants re-filed their appeal bond, which is again approved by the Court, and is in words and figures as follows:

62 In the Circuit Court of the United States for the Eastern District of Oklahoma.

Consolidated No. 856.

No. 856.

KANSAS NATURAL GAS COMPANY, Plaintiff,

vs.

CHARLES N. HASKELL, a Citizen of the State of Oklahoma and a Resident of the County of Muskogee Therein; Charles West, a Citizen of the State of Oklahoma and a Resident of the County of Garfield Therein; and John J. Shea, John H. Kane, and Frank B. Burford, Citizens of the State of Oklahoma and Residents of the County of Washington Therein; J. E. Love, A. P. Watson, and J. J. McAlester, Citizens of the State of Oklahoma and Residents Respectively of the Counties of Woodward, Pittsburg and Pottawatomie Therein; and Pete Hanraty, a Citizen of the State of Oklahoma and a Resident of the County of Pittsburg Therein, Defendants.

No. 857.

THE MARKET MINING COMPANY, Plaintiff,

vs.

THE SAME, Defendants.

No. 858.

A. W. LEWIS, Plaintiff,

vs.

THE SAME, Defendants.

Bond.

Chas. West, Attorney General of the State of Oklahoma.

63

Bond.

Know all men by these presents: That Charles N. Haskell, Charles West, John J. Shea, John H. Kane, Frank B. Burford, J. E. Love, J. J. McAlester, A. P. Watson, and Pete Hanraty, defendants in the above entitled cause, as principals, and A. C. Trumbo, as surety, are held and firmly bound unto The Kansas Natural Gas Company, The Marnet Mining Company, and A. W. Lewis, plaintiffs in said cause, in the sum of Five Hundred Dollars, to be paid to them and for the payment of which well and truly to be made they and each of them are bound by these presents

Sealed with our seals and dated this 26th day of October A. D., 1911.

Whereas, the above bounden Charles N. Haskell, Charles West, John J. Shea, John H. Kane, Frank B. Burford, J. E. Love, J. J. McAlester, A. P. Watson and Pete Hanraty, appellants seeking to prosecute their appeal to the Supreme Court of the United States, to reverse a final decree, rendered and entered in the Circuit Court of the United States for the Eastern District of Oklahoma, wherein appellants were defendants and the appellees herein were the plaintiffs, on the 26th day of October, A. D., 1911.

Now, therefore, the conditions of this obligation are such that the above named appellants shall prosecute their appeal to effect
64 and answer all costs that may be adjudged, if they shall fail to make good their appeal, then this obligation to be void, otherwise to remain in full force and virtue.

CHARLES WEST,
CHARLES N. HASKELL,
JOHN J. SHEA,
JOHN H. KANE,
FRANK B. BURFORD,
J. E. LOVE,
J. J. McALESTER,
A. P. WATSON, AND
PETE HANRATY,
By W. C. REEVES,
Their Solicitor.
A. C. TRUMBO.

This bond approved this 26th day of October, A. D. 1911.

RALPH E. CAMPBELL,
Judge of the District Court, Acting as Judge of the Circuit Court of the United States for the Eastern District of Oklahoma.

Reapproved Dec. 6th, 1911.

RALPH E. CAMPBELL, *Judge.*

(Endorsed:) Consolidated No. 856. In the Circuit Court of the United States for the Eastern District of Oklahoma. Kansas Natural Gas Company, Plaintiff, vs. Charles N. Haskell, et al., Defendants. No. 856. The Marnet Mining Co., Plaintiff, vs. The Same. Defendants, No 857. A. W. Lewis, Plaintiff vs. The Same, Defendants, No. 858. Bond. United States Circuit Court Eastern Dist. Okla. Filed in Open Court Oct. 26, 1911. L. G. Disney, Clerk. Refiled in Open Court Dec. 6, 1911. L. G. Disney, Clerk U. S. Circuit Court, Eastern Dist. Okla.

65 Thereafter on the same day, in open court the Plaintiffs accepted service of the defendants' Notice of Appeal, Citation and Assignment of Errors.

66 UNITED STATES OF AMERICA,
Eastern District of Oklahoma, ss:

I, L. G. Disney, Clerk of the United States Circuit Court for the Eastern District of Oklahoma, do hereby certify that the foregoing is a true and correct transcript of so much of the consolidated case of the Kansas Natural Gas Co. vs. Charles N. Haskell, et al., The Marnet Mining Company vs. Charles N. Haskell, et al., and A. W. Lewis vs. Charles N. Haskell, et al., appearing on file and of record in my office at Muskogee, Oklahoma, as was ordered by the Counsel for the Defendants, as necessary to be prepared and authenticated for this appeal.

In testimony whereof, witness my hand and official seal of this Court, at Muskogee, Oklahoma, this 6th day of December, A. D. 1911.

[Seal of the United States Circuit Court, Eastern District of Oklahoma.]

L. G. DISNEY, *Clerk,*
By H. E. BOUDINOT, *Deputy.*

Endorsed on cover: File No. 22,990. E. Oklahoma C. C. U. S. Term No. 914. Charles N. Haskell, Charles West, John J. Shea, et al., appellants, vs. The Kansas Natural Gas Company, The Marnet Mining Company, and A. W. Lewis. Filed December 30, 1911. File No. 22,990.

Supreme Court, U. S.
FILED.
JAN 10 1912
JAMES H. McKENNEY,
CLERK.

IN THE

SUPREME COURT

OF THE

UNITED STATES

OCTOBER TERM, 1911

CHAS. N. HASKELL, ET AL,
Appellants

vs

THE KANSAS NATURAL GAS COMPANY, ET AL,
Appellees

Case No. 914

Application to Advance by Appellants

CHAS. WEST,
Attorney General of Oklahoma

IN THE

SUPREME COURT

OF THE

UNITED STATES

OCTOBER TERM, 1911

CHAS. N. HASKELL, ET AL,
Appellants

vs

THE KANSAS NATURAL GAS COMPANY, ET AL,
Appellees

Case No.

Application to Advance by Appellants

Comes now the appellants, by Charles West, one of said appellants and Attorney General of the State of Oklahoma, and prays the court to advance the above entitled suit for hearing at an

early date, convenient to the court, and respectfully represents to the court:

That unless said cause be advanced, the subject-matter of the controversy will be destroyed, under the protection of the decree of injunction entered in the lower court, and the effect of the appeal frustrated before or by the time of its final determination.

This cause was before this court at the October 1910 Term, and upon the application of appellants was advanced for hearing, and the decree of the lower court was affirmed, but on application of appellants to modify the decree to conform to the opinion of this court, it was ordered on May 29th, 1911, that either party be at liberty to apply to the court below for a modification of the decree, insofar as they may deem such modification required to secure conformity to the opinion of the court.

An application was then made to the court below to modify the decree to secure conformity to the opinion of this court, which motion was

overruled by order entered in the court below on December 6th, 1911, from which order an application for appeal was made and allowed and transcript of the proceedings on appeal, filed in this court.

The grounds urged in support of the application to advance, which was allowed by this court at the October 1910 Term, are again urged in support of this application, except insofar as the contention is foreclosed by the opinion of this court filed May 15th, 1911, (221 U. S. 229, 55 L. ed. 716). The former application contained the following matter:

> "The cause of the controversy is the attempt of the State of Oklahoma to conserve the deposits of natural gas situated within its limits by legislation (which Acts the bills seek to have declared unconstitutional and void) and, particularly as far as this appellant is concerned, by judicial proceedings threatened by this appellant to be taken under the power of the State to control the use of its highways and forbid by legislation and prevent by litigation the erection and maintenance in, over, under, or across such high-

ways, of unlicensed plants for the transmission of gas by pipe line.

"*The original bills filed* in the Circuit Court of the United States for the Eastern District of Oklahoma seek to enjoin the authorities of that State from enforcing the terms of an act of the State legislature which limited to domestic corporations the use of public highways either along, across, under, or upon, for the construction or operation of natural gas pipe lines; also said bills seek to enjoin the authorities of the State, including appellant, from enforcing any other statute or common law of the State which might interfere with the construction, maintenance or operation by appellees of their pipe lines described in the bills which were intended at the time the bills were filed and do now transport natural gas from Oklahoma interstate into Kansas and other States.

"The *matter of is of great public importance* to the general public of the State of Oklahoma, because the use of the large pipes and pumps intended by appellees at the time the bills were filed, and now actually erected, maintained, and used by them, is rapidly, and with great waste, destroying the entire supply of natural gas in the State, threatening the destruction of the oil sands as wells as the gas field,

and promises in the very near future to rob the State of its sole natural fuel supply now practically in general use.

"The State of Oklahoma is practically without a supply of wood adequate and suitable for fuel. Its supply of coal, is, because of the soft nature of the mine walls, ceilings, and floors, the great dryness of the mines, the large amount of inflammable gases therein, the incline of the coal strata, and other causes, very expensive to mine, with every promise of becoming rapidly more expensive to the point of commercial prohibition of its use. The coal output is yearly becoming less in volume and not now of general use. *Natural gas is thus the sole adequate fuel supply.*

"Because natural gas, oil and salt water generally, if not always, occur in the Oklahoma petroleum sands, one above the other in the order named, and also because of the intercommunication beneath the surface of the earth through the porous rock of the various petroleum strata, as well as communication through the oil and gas wells in operation, the rapid taking away of gas by enormous suction pumps, such as appellees threaten to install, and now actually are using immediately north of the state line in Kansas, will break down the rock structure, destroy

the rock pressure, cut off the supply from the wells of other persons drilled and in use previous to the construction of appellees' pipe lines, and threaten the flooding with salt water from below of both the gas and oil wells of the entire vicinity.

"This injury alleged as threatened by the answer is, since the erection of appellees' pumps and lines, becoming an actual fact. The gas fields of the State are becoming rapidly depleted, the supply being inadequate to the consumption even before the bills were filed. During this winter, though extraordinary warm, the supply of natural gas in the lines already in operation before these injunctions were allowed, is growing rapidly less and the rock pressure constantly passing off rapidly.

"Of the gas wells drilled in Oklahoma, already three-quarters and more are now dry and exhausted. The experience of Kansas, Indiana, and Ohio justifies the appellant in believing that if the appeal is not immediately heard the gas supply in Oklahoma may be exhausted before the appeal can be heard if taken in regular order. *These matters are set out in substance in the answer.*

"The legal questions involved are these:

"The appellees justify their acts as interstate commerce.

"The position of the State is that the acts attacked are to prevent distributive waste.

"The State can prohibit the use of pumps. They inordinately waste. (Ohio Oil Co. vs. Indiana, 177 U. S. 190).

"The State's power of conservation is that of police. The police power may use the device of creating a franchise and limiting to corporations. (Noble State Bk. vs. Haskell, this term).

"The erection of an enormous pump north of the State line, (as appellees' at Caney, Kas.), may render nugatory the State's police power if transmission by pipe line cannot be confined to the State's corporations and within the State.

"In no event should the legal officer of the State be enjoined from acting under the common law to prevent a trespass upon the State highways.

"In so far as the legislation and litigation of the State injure appellees they do so negatively, by a failure to grant them franchises, not affirmatively. If neither the State nor the United States grant the necessary franchise, appellees suffer neither *damnum* nor

injuria, (Western Union vs. Penn., 195 U. S. 594).

"Temporary orders without stay were granted previous to August 18, 1910. These were made permanent without stay in January, 1911, and an immediate appeal taken here. If they were erroneous orders, the injury they were working is irreparable."

The grounds urged in support of the motion to modify the affirmance, in said cause No. 916, October Term, 1910, upon which this court ordered on May 29th, 1911, that either party be at liberty to apply to the court below for a modification, are also urged in support of this application as follows:

"In the opinion of this court in the last paragraph it uses the following language:

" 'And, we repeat again, there is no question in the case of the regulating power of the state over the natural gas within its borders. The appellees conceded the power, and, replying to the argument of appellant based on the intention of appellee to erect large pumps to increase the natural rock pressure of the gas, appellees say, 'Kansas by legislative enactment forbids the use of artificial ap-

paratus to increase the natural flow from gas wells; Chapter 312, Laws of Kansas, 1909, page 520. To this act the Kansas Natural Gas Company has no objection.'

"The decree of the lower court in the third and fourth paragraphs thereof (page 134 record), made provision inconsistent with this portion of the opinion, by providing as follows:

" '3. The court doth find the issues and equities herein in favor of the plaintiff, and that the plaintiff is entitled to the relief prayed for in the bill of complaint herein; and doth find, adjudge and decree that chapter 67 of the Session Laws of the State of Oklahoma of 1907-8 passed and enacted by the Legislature of said State of Oklahoma, and approved by the Governor of said State on the 21st day of December, 1907, and referred to in plaintiff's bill of complaint herein, is unreasonable, unconstitutional, invalid and void and of no force or effect whatever.

" '4. The temporary injunction heretofore ordered and entered herein is hereby made permanent and perpetual, and the defendants and each and every one of them, their representatives, agents, servants, attorneys, workmen, and employees, and all other persons whomsoever advised, inspired, influenced, incited or prompted

by them or either of them, are hereby forever restrained and enjoined from committing any of the acts complained of by complainant in its or his, bill of complaint, and from tearing up or destroying, or in anyway interfering with the laying, building, and construction of complainant's pipe lines, or any of the pipe lines referred to in the prayer of complainant's bill of complaint, in, through or out of the State of Oklahoma, by reason of any of the terms or provisions or contents of chapter 67 of the Session Laws of 1907-1908 passed and enacted by the legislature of the State of Oklahoma or by reason of any other claimed authority or statute of said state, or common law right, rule of action or unwritten law whatsoever; and from in any manner instituting, prosecuting, or conducting any suits or suing out any writs of process in any of the state courts of the State of Oklahoma against the complainants, or any one representing it, or him, for the purpose of enjoining, restraining, or interfering with either of them in the laying, building, construction, maintenance or operation of any gas pipe line either under the authority of said legislative act contained in said chapter 67 of the Session Laws of Oklahoma

1907-8 above referred to, or under any other law or statute of the State of Oklahoma or under any common law right, rule of action, or unwritten law of the State of Oklahoma.'

"The decree goes further than the opinion of this court in that it finds that all of chapter 67 of the Session Laws of the State of Oklahoma of 1907-8, approved on the 21st day of December, is invalid, void and of no force and effect whatsoever, whereas, section 5 of said act constituted the laying, construction, building and maintenance of natural gas pipe lines along, over, across or through the highways an additional burden upon such highways for which compensation must be given.

"The opinion of this court sustains that provision of the act.

"Section 5 is as follows (p. 22, record):

" 'Sec. 5. The laying, constructing, building and maintaining a gas pipe line and lines for the transportation or transmission of natural gas along, over, under, across or through the highways, roads, bridges, streets or alleys in this state, or of any county, city, municipal corporation or any other public or private premises within this state is hereby declared an additional burden upon said highway, bridge, road, street, or alley, and any other pri-

vate or public premises may only be done when the right is granted by express charter from the state and shall be constructed, maintained or operated until all damages to adjacent owners are ascertained and paid as provided by law.'

"Section 6 of the act provides that pipe lines shall be under the direction and inspection if the chief mine inspector. It reads as follows (p. 23, Record):

" 'Sec 6. All pipe lines for the transportation or transmission of natural gas in this state shall be laid under the direction and inspection of proper persons skilled in such business to be designated by the chief mine inspector for such duty, and the expense of such inspection and supervision shall be borne and paid for by the parties laying and constructing such pipe lines for the transportation or transmission of natural gas.'

"The decree nullifies that section of the act.

"The opinion of the court maintains the same.

"Section 7 of the act provides a limit upon the natural gas pressure in pipe lines. It reads as follows (P. 23, record):

" 'Sec. 7. No pipe line for the transportation or transmission of nat-

ural gas shall be subjected to a greater pressure than three hundred pounds to the square inch, except for the purpose of testing such lines, and gas pumps shall not be used on any gas pipe lines for the transportation of natural gas or used on or in any gas well within this state.'

"The decree nullifies that section of the act.

"The opinion of the court sustains that section of the act in this matter.

"Said section 7 of the act also provides a prohibition against the use of gas pumps on any gas pipe lines. The decree of the lower court nullifies said section of the act in this matter.

"The opinion of this court sustains said section 7 of the act in this matter.

"The answer (on page 107 of the record) admitted a shortage of gas in the State of Kansas and alleged:

"1. That this shortage had been brought about by the practices of the complainant and others ;

2. That the same practices would lead to the same result in Oklahoma:

"3. That the present daily consumption in Oklahoma was greater than could safely be taken from the wells, and

"4. Alleged that the complainant was actually in the process of con-

structing pumping stations without the state, which would inevitably render entirely useless all the present lines in gas by the complainant and others from Oklahoma, and that the use of large pumps, as was then actually threatened by the plaintiff had the effect of destroying the gas wells as though they were shot with dynamite.

"The particular allegations referred to are as follows:
(page 107 of the record):

" 'I admit that there is now a shortage of gas in the State of Kansas and aver that said shortage has been largely caused by the transportation of the gas fields into the larger cities of Kansas and Missouri, and that such transportation has seriously impaired the life and value of the Kansas natural gas supply.

" 'I believe that if the complainant is permitted to extend its pipe lines over the highways into the State of Oklahoma, that the Oklahoma natural gas supply will be exhausted in a very few years, whereas, if it is retained and preserved for the use of the people of the state it will last for many years longer.

" 'There have been many wells drilled in the state of Oklahoma having an initial capacity of from one to ten million feet per day which have

within one to three years declined to a daily capacity of approximately 100,000 feet per day, and I aver that while the present daily capacity of the gas wells of the State is approximately one and a quarter billion feet per day, that the present daily consumption is more than can be safely taken from said wells without rapidly destroying their efficiency and depleting this great natural resource of the state.'

. . . . . .

(Page 109 of the record):

" 'That because plaintiff may outside the State of Oklahoma erect enormous pumping stations which they are now actually in the process of constructing, they might reasonably and would inevitably render entirely useless all the present lines in Oklahoma, and take away from the towns and cities of Oklahoma the entire practical use of their sole and natural fuel, because when gas is removed by the limited, prudent and natural rock pressure the nature and formation of the gas and oil sand is not radically changed, but if large pumps to pump out the wells out of proportion to the rock pressure are used, as are now actually threatened by the plaintiff, the gas and oil sand is actually broken down as though shot with dynamite or other

violence, and the salt water thereunder, always to be found, at once drowns out the wells, where rock pressure has been too greatly or rapidly decreased.'

"The appellant alleges that the meaning and effect of the judgment of this court is that the state may control the method in which the commodity is taken from the wells by forbidding the use of pumps;

"That the decree of the lower court restrains the appellant from proceeding against the appellee because of its transgressions in the matter of taking gas by pumps for transmission through the lines under a pressure greater than that authorized by law;

"Therefore, the decree of the lower court, instead of being affirmed in toto should be modified accordingly."

A report on the natural gas conditions in what is known as the MidContinental Gas Field, was made on November 21, 1911, for and submitted to the Public Utilities Commission of Kansas City, Missouri, by Erasmus Haworth of the University of Kansas. A summary of this report made by Professor Haworth, is herein reproduced as a part of this application, and designated "Appendix A."

Appellants therefore pray that this honorable court will advance said cause and set it down for an early hearing.

Chas. West

Attorney General of the State of Oklahoma,
and Solicitor for Appellants.

"APPENDIX A"

A

REPORT

ON NATURAL GAS CONDITIONS

IN THE

MID-CONTINENTAL GAS FIELD

SUBMITTED TO THE

PUBLIC UTILITIES COMMISSION

OF

KANSAS CITY, MISSOURI,

BY

ERASMUS HAWORTH

Lawrence, Kansas,
November 21, 1911

SUMMARY

1.—The Mid-Continental Gas Fields are now supplying gas for heat, light and power to about one million people, of which supply forty-five percent is delivered to factories and fifty-five percent for domestic use.

2.—All the large pipe-lines now are drawing gas from the same general areas, and therefore, one should have a supply about as long as another.

3.—The properties of the Kansas Natural Gas Company particularly, and of other pipeline companies generally, are handled in a manner which tends to shorten unnecessarily the life of the field, and ultimately reduce the profits of the companies.

4.—Should the present methods of handling properties and vending gas be continued, two more winters, or three at most, is as long as we may expect natural gas to be delivered to Kansas City in sufficient quantities to equal present

domestic consumption, unless future developments of new gas far exceed present indications.

5.—Should gas be denied all factories and reserved strictly for domestic use, and should gas properties be handled in a scientific manner, the entire community now reached by all pipelines should have a satisfactory supply for from five to seven years.

6.—Future developments should materially add to the present gas supply, but no substantial facts are at hand indicating the discovery of new fields within reach of Kansas City at all commensurate with those already developed.

7.—Conditions now are such that the human element enters into the problem of gas delivery about as much as does the supply of gas, which renders all estimates for the future more untrustworthy than they would be were this a problem of ordinary estimation.

INTRODUCTION

This report is made by the writer to the Public Utilities Commission of Kansas City, Missouri. The object of the report is to supply the Commission with reliable data regarding the past and present condition in the Mid-Continental Oil and Gas Field which have an important bearing on the subject of a supply of natural gas to Kansas City.

The work was undertaken early in September and completed late in November.

Naturally the subject divides itself into two general parts: First, the supply of gas, and second, the transmission of the same. This first part is again divisible into two sub-parts: First, the present supply, and, second, the probable supply in the future.

I have conducted in person all investigations regarding the supply of gas. When my own investigations were more than half finished, at the request of the Commission, I called to

my assistance, Professor P. F. Walker, of the University of Kansas, and gave him entire charge of the second line of the investigation, namely, the entire question of transportation of gas from the fields to Kansas City. His report in detail will be independent of mine, but in general may be looked upon as a second part.

From the start it was deemed advisable to make a thorough investigation of the present conditions throughout the field, and to gather accurate statistics showing the same, which, when properly arranged could be placed on file for future reference. From these statistics, to which should be added all the personal information and impressions gained by the writer throughout the entire period of gas development, general conclusions were to be drawn, which conclusions are herein contained briefly expressed, on the first page of this report.

In arranging the report above mentioned, it was found convenient to put the personal writings of the author in one volume; the purely statistical phase of the report in a second vol-

ume, consisting principally of ribbon from an adding machine containing large masses of figures; a third volume containing reports of assistants and letters of opinions from prominent gas men; the fourth volume of maps; and a fifth and sixth volume containing more detailed reports of individual wells. These last two volumes are the same series, and are paged continuously from the beginning of volume V through volume VI, and are separated for convenience in handling. In addition, the report contains two wall charts, the first of which is an outline map of the area supplied with natural gas, showing the pipe lines through which gas is collected and distributed. By reference to the U. S. Census of 1910, it was found that approximately 1,000,000 people are supplied with gas for heat, light and power, from this one gas area. A second wall chart shows the entire gas field. The map is marked into sections, townships and ranges, so that the reader when examining the detailed reports of Volumes V and VI may locate readily the exact position in the

gas fields of each well described. It was impossible to mark well locations on this map, but with the sections, townships and ranges marked the reader readily can find the exact location of any well in the entire area. Also, this chart has the main gas pools marked on it, and two sets of figures, one in white and one in red for each pool. The white figures represent the average pressure and volume for each pool before any material reduction had been made. The second set of figures, in red, represent the average pressure and volume for each pool at the time of this investigation.

It should be stated with emphasis that the figures above referred to are the best I was able to give. Persons accustomed to gathering data and striking averages from the same will understand readily how that an average may, and often is, different from any one figure used. In this case I have used, not only the data gathered in detail and included in the report, but all the information and impressions gained throughout a period of more than fifteen years

during which time I occupied a position of close intimacy with the entire development throughout the Mid-Continental Fields. I am acquainted personally, and in detail, with many wells which came into existence, supplied a large amount of gas, and became exhausted and had the casing drawn years ago, and which, therefore, do not appear at all in the statistics herein included.

For example, the famous Caudel well, about two and one-half miles east of Benedict, was the first really big gas well drilled in Kansas. Its owners allowed the well to run wide open for about three weeks, hoping that the escaping gas would relieve the pressure so that oil might be obtained. Later, it was piped into Chanute, sixteen miles away, and supplied that town until it had brought in a revenue of fully $100,000, with gas marketed at ridiculously low rates at that period. Years ago it was exhausted, the casing drawn, and the sixteen miles of pipe line taken up. Similarly, one well in the southern end of the Vilas Field supplied the town

of Parsons for a number of years, and various others, which might be mentioned, none of which could be included in the detailed statistics of this report.

It is my best judgment, that in order to obtain all the gas from a gas well, and from a gas pool, great skill is necessary in handling the wells. The whole history of gas development in America shows this. I am personally acquainted with instances in the east where wells have been mismanaged and later revivified, and made productive. I shall have quite a little to say on this subject in the latter part of this report when discussing probable conditions in the future.

Individual gas pools herein considered are seventeen in number, ten of which are in Kansas, and seven of which are in Oklahoma. The seventeen were chosen as the only ones which have any direct bearing on the question at hand. Numerous other lesser fields have existed, or do exist now, but they are so small and so nearly exhausted that in my opinion they have no bearing on the question now under investigation.

Such are the two small fields east and west of Paola, and the field about Osawatomie, the little field south of Garnett, the field at Erie, and the field at New Albany, and others in Kansas. Likewise in Oklahoma a considerable amount of gas has been obtained in the eastern part of the oil fields in the vicinity of Alluwee, and throughout the "shallow pool" area. Small developments of gas are known about Muskogee, and Red Fork, and Henrietta, and others, where the gas thus far found is too small in quantity to have any important bearing at present.

Each one of these seventeen important wells will be discussed at proper length and conclusions drawn therefrom.

Four really great areas have been developed, which by their greatness stand out prominently from the others. Three of these today are largely exhausted and the fourth one is failing rapidly. These four are the Iola Pool, the Vilas Pool, the Independence Pool, and the Hogshooter Pool. Other important gas areas have been

found, but they all pale in comparison with these four.

AREAS IN DETAIL

IOLA POOL.

This pool is so well described historically, statistically, and a prophecy for the future by Mr. W. H. Ewing, that little in addition need be said here. See Volume III, pages 31 to 37 inclusive.

This was the first great gas pool in the Mid-Continental Field. At present it is impossible to estimate the total amount of gas it has produced. Recalling the large factories, zinc smelters, portland cement plants, and brick plants which it supplied throughout a number of years, and also, the waste and extravagance shown in early times, the importance of this pool is magnified. Could the sum total of gas produced by each of the various pools and the area be measured, it is doubtful if any other one would surpass this.

It is common knowledge that for the past two years gas around Iola is substantially ex-

hausted. On Chart No. 2, I have placed the average present pressure at 20 pounds, and the average volume at 200,000 cubic feet. It should be remembered that the Iola sand is a very coarse one, and, therefore, yields a maximum amount of gas with so low a pressure. Wonderful as this field has been, it is common knowledge that its usefulness for supplying gas to be piped north is entirely passed.

HUMBOLDT POOL.

The Humboldt gas pool is difficult to describe geographically, because it "extends beyond the borders on all sides." Truly speaking, there is no distinct Humboldt field, but from market conditions, and hence for gathering statistics, such a pool exists.

To the east and southeast of Humboldt irregularly for a distance of eight or ten miles a good many gas wells have been obtained. The largest of these were in a little field almost isolated, lying astride the county line northeast of Chanute. Here, I believe, one 15,000,000 well was obtained. Ranging northward from this

pool gas was found irregularly to a point a few miles farther north than opposite Humboldt. Some of the wells were very strong for their depth, the sand being coarse and open and dry. In this connection I want specially to call attention to the letter from Mr. W. M. Gordon, Mr. O. A. Evans and Col. D. H. Fisher, in Volume III pages 38 to 44 inclusive, and also, to the detailed statistics and adding machine ribbons, Volume II page 4. Quite a large fraction of these statistics, and a portion of the three letters refer in part to the west Humboldt field.

West, southwest and northwest of Humboldt gas also was found in quantities. One well about seven miles southwest has a capacity of from seven to eight millions. Quite a number north and northwest had a capacity as great as five millions, and a few in the northern end of the Vilas Field may have reached as much as ten millions. Uniformly the farther west the location, the greater the depth of the well, and also the greater the original rock pressure. The volume of a well, on the other hand, depends

more on the thickness and coarseness and porosity of the sand. In this way some of the wells to the east of Humboldt were as large and larger than any to the west. At the present time nearly all of this gas is gone. I had different assistants in whose ability and integrity I had confidence, measure quite a number of them during the first half of September. These measurements correspond so uniformly with the reports that are given by the Humboldt Gas Company that they give confidence to the whole bunch of statistics.

It will be noted here, see adding machine ribbons, that a group of thirty-five wells belonging to the Kansas Natural Gas Company have an average rock pressure of one thirty-five pounds. This particular list was furnished by the Kansas Natural Gas Company. One of them, strangely, has a rock pressure of 260 pounds, which item probably was a clerical error. The statistics of 149 wells gathered independently gave an average of 37 pounds rock pressure per well when dead wells were includ-

ed, 79 live wells, gave an average pressure of 71 pounds. I assume this 71 pounds exceeds the average of forty-four pounds given for the wells owned by the Kansas Natural, because the Kansas Natural Company is drawing its wells harder than local consumers. It will be noted that on the ribbon the average volume for these 79 wells is 270,000 cubic feet, while on Chart No. 2 I have placed the average for the field at 200,000. The difference is due to the fact that I have known personally a large number of little wells exist about which we did not get such detailed information, and 200,000 is more likely to be too large than too small. It is my judgment that we can hope for nothing from the Humboldt Fields, either east or west from the town, to supply northern demands.

CHANUTE POOL.

Chanute is an area difficult to describe in detail. For our purpose, however, it is bounded on the north by the Humboldt Field, on the south by the Barren Areas, between Humboldt and Cherryvale, and on the east by the limit of gas,

and on the west by the County line between Wilson and Neosho counties. Although the gas pool crosses this line and connects with the Vilas pool.

In earlier days, Chanute obtained a gas supply from wells east of the town which produced around five millions, while the wells northeast already referred to on the County line between Allen and Neosho counties are larger. It is not at all unusual to find a well in the valley near the city reaching from two to three million. The Chanute field limited as above has been used principally by the city of Chanute and a few factories nearby. It has always been a light pool and has never supplied any considerable quantity of gas to be piped to the north. For this reason we do not find such utter exhaustion here as in some other places, and yet it will not do to assume that one bit of gas can be supplied from this pool to the northern consumer.

VILAS POOL.

The Vilas Pool constitutes a long slender

area extending north and south and occupying the high ridges to the west of Chanute, southward to within eight or ten miles of Cherryvale. Opposite Chanute there is no sharp division line between it and the Chanute pool. On the west, likewise, it almost merges into the Fredonia-Altoona Pool. However, the main part of it is reasonably well defined and has a long trend north and south, being two or three times as long as it is wide. This is one of the most productive pools thus far developed in the entire Mid-Continental Field. The first really great well developed in it was the Caubel well near Benedict, already mentioned, which for more than two years, supplied, by itself, the city of Chanute. This well, however, is so far west that it is immaterial whether it is counted in the Vilas Pool or in the Fredonia-Altoona Pool. The second largest well to be developed was drilled by Colonel Isett, of Chanute, and was located near the village of Vilas. This well has a capacity ranging between 25 and 30 millions. Later, other wells were obtained equalling it in pressure and volume.

At the present time many of these wells are entirely gone, while the others are reasonably good. Throughout two winters the Kansas Natural Company drew from this field very largely for their northern supply and at the present time the wells they own are considerably smaller in pressure and volume than the average for the area. A number of private owners are complaining bitterly because they have no market for their gas. In such cases usually they are unwilling to accept the low price offered by the Kansas Natural or, are so far away from the Kansas Natural pipe lines that the latter does not care to build to their wells. By referring to the ribbon from the adding machine, Volume II, page 6, it will be noted that the average rock pressure for 77 wells in this area, a number of which are dead, is one hundred and fifty-six pounds, while the average for 56 live wells is two hundred and twelve pounds. Also, it will be noted that the average rock pressure for 64 wells owned by the Kansas Natural is but 29 pounds. Likewise, the average present volume

for 78 wells is one and one-half millions and for 55 of the best wells is almost two and a quarter millions. This contrasts strongly with the pressure and volume of the wells belonging to the Kansas Natural, principally because, it is my opinion, the Kansas Natural wells are drawn almost to exhaustion.

Summing up the whole matter on Chart No. II, the best average I could strike was the present rock pressure of 100 pounds and a present volume of one and a half million per well. If a pipe line were to bid sufficiently high to shut off all gas for local factories, it is quite evident, I think, that relatively large quantities of gas could be obtained from the Vilas Pool to supply pipe line consumers. If, however, the policy of the Kansas Natural should be to exhaust the wells it now owns and buy no others, it can get but little more from this pool. At present the Kansas Natural is drawing about ten per cent of its consumption for the northern lines from Wilson, Neosho and Allen counties, almost all

of which comes from Wilson County and the Vilas Pool. See Vol. III, page 7.

FREDONIA-ALTOONA POOL.

The area covered by this name is somewhat varied. On the east it merges with the Vilas Pool, with no well defined line between the two. On the west it might be extended all the way to Fredonia, although the main part of the pool reaches only a mile or two beyond the bluff lines on the west side of the Verdigris River. Two areas within this pool are in a measure, distinct, and together constitute the most important gas fields in it. One of them lies on the east side of the river to the east and northeast of Altoona, where it merges with the Vilas pool. Some tremendously big wells have been obtained here, far exceeding four hundred pounds rock pressure, and the ten million mark in volume. The adding machine ribbon, Vol. II, page 7, shows a few of these, but not many. One of them, it will be noted reaches a volume of twenty-one millions.

The present rock pressure for 177 wells

averages but fifty-two pounds and for 121 averages but 75 pounds. By examining the ribbon, however, it will be seen that some of them range over 211 pounds and it is known to me personally that some of the wells belonging to a company which decline to give up their statistics are scarcely reduced from the original pressure and volume. The present average volume of 97 wells is something over 300,000 cubic feet per day, and forty wells is 775,000 cubic feet per day, as shown on the adding machine ribbon. My estimate, as shown on Chart No. II, is one hundred and fifty pounds rock pressure and 900,000 cubic feet volume. It may be noted that the present rock pressure is given as much larger and the volume as smaller than for the Vilas Field, which I think is correct, because the Vilas Field sand in general is coarser than the average for the entire Fredonia-Altoona Field, and, therefore, yields more in proportion to the rock pressure. If, however, we were to exclude the western portion of the Fredonia-Altoona Field, then the latter would, in my opinion, equal in average productiveness, the Vilas Field.

Here also a considerable amount of gas might be obtained to pipe to the north.

CHERRYVALE POOL.

The Cherryvale Pool lies principally to the northeast, east and southeast of Cherryvale. This is one of the oldest productive fields in the State. Originally gas was all obtained to the east of town, where a very coarse and productive shallow sand was encountered. With a pressure of less than two hundred pounds a few of these early wells had capacities ranging between eight and ten millions each, probably the strongest wells for their depth ever opened up in the entire area. But coarse, porous sand is easy exhausted, and long ago these wells went dead. Later, after the Edgar Zinc Company located their smelter at Cherryvale, and the Federal Betterment Company began operations, drilling was extended to the north, and in this way the Cherryvale Pool field almost merged with the Vilas Pool. At one time seven brick plants and a glass plant were in operation here, so that the local demand for gas was very great, and as a

result but little, if any, was piped out. At the present time the gas pressure and volume is remarkably low and gas is almost gone. Reference should be made to Mr. Brown's report on Cherryvale, Volume III, page 48, and also Volume III, page 57. This last page was referred to Mr. Strickler, manager of the Federal Betterment Company, the owner of five wells there exhibited. Mr. Strickler's report was that the exhibit was substantially correct. It will be noted that the average rock pressure for the five wells is eight pounds, and the average volume 28,810 cubic feet per day. Other wells, however, are better than these, so that the summary on Chart No. II of a rock pressure of 25 pounds and a capacity of 150,000 cubic feet per day is the best average I can strike.

It is entirely useless to expect gas to be piped from this area for any outside territory.

LE HUNT POOL.

The area included under this heading is a small pool lying to the northwest of Indepen-

dence, practically surrounding the United Kansas Portland Cement plant at Table Mound. The wells here are moderately deep, and, therefore, the original rock pressure was relatively high, almost four hundred pounds, and the original volume reasonably satisfactory, often going beyond 5,000,000 per day. The ribbon from the adding machine in Volume II, page 9, shows details and averages from a few wells. The pool is exhausted and the Portland Cement plant is bringing all of its gas from other areas, so that it was considered a waste of time and money to investigate this pool further.

INDEPENDENCE POOL.

The area contained in the Independence Pool as herein considered lies to the south, southeast and southwest of Independence; practically it merges with the Coffeyville Pool on the south. This is one of the four great pools in the entire Mid-Continental area and for coarseness of sand and hence volume of gas obtainable, in my judgment, is the equal of either of the four. The first wells drilled in this area were completed

with a small size drill bit in the productive sand. Later, Mr. John Smith, of Pennsylvania, put down a well with a bit which made a hole about nine inches in diameter in the gas sand. This proved to be of such tremendous volume it could hardly be measured. The tables generally used for such calculations do not include a nine inch pipe, and hence special calculations had to be made. Some parties to whom the measurement data were given for calculation call it a 44,000,000 well, while others were content to stop at 35,000,000. Some other wells were drilled in the same sand and almost without exception tremendously big wells were found. If this richest area alone were counted, I presume that the original average would have been at least 25,000,000 cubic feet per well. But, as we must include in the entire Independence area the border lines, as well as the rich core, the original average is very materially reduced.

The consumption from the Independence Field has been enormously great. The Kansas Natural first extended its pipe line southward

into this field during the summer of 1907, so that from that time to the present the field has helped supply all the northern cities. The Joplin pipe line belonging to this company, was built during the summer of 1905, and practically the entire supply for this pipe line, until only a short time ago was obtained from the Independence Field. To this should be added the local consumption, which is enormously great. The Western States Portland Cement Company, the Coffeyville Vitrified Brick Company, and other large brick companies and factories, a number of large glass factories, the domestic consumption in the city of Independence, and other factories consume, according to Mr. Brown's estimate, Volume III, page 51, a total of over 16,000,000 cubic feet per day. At the present time the Kansas Natural estimate that this field is supplying them with 25 per cent of all the gas they send through their pipe lines, the larger portion of which, of course, goes to Joplin. See Vol. III, page 7.

This tremendous drain, unequaled for any

of the fields to the north, and the unusual ease with which gas may be obtained, due to the character of the sand, has made the exhaustion of this field surprisingly rapid. By reference to the adding machine ribbon, Vol. II, page 10, it will be seen that the original rock pressure for 213 wells averaged 390 pounds and the original volume for the same number of wells was almost 9,000,000 cubic feet per day. It should be noted, however, that a number of these wells were drilled after the field was partially exhausted, and therefore, the original pressure and volume for these wells was considerably below what they would have been had these wells been drilled earlier. My source of information was that is was impossible to gather details on this particular pool for the present conditions without resorting to what seemed to be an unwarranted amount of clerical work. The sum total and averages for all of Montgomery County, are shown on adding machine ribbon, Vol. II, page 14. Here it is shown that the average pressure for 681 wells is 56 pounds, and for 389 wells is

100 pounds, and the average capacity for 389 wells is a little over 1,000,000 cubic feet per well. Special reference should be made to the report by Hon. T. S. Salathiel, Vol. III, page 67, and also the Montgomery County map he furnished which is found in Vol. III, map No. 2. On this map the rock pressures are marked in red, and the volumes in black with the last three ciphers omitted. In each case the numerator of the fraction represents present measurements, and the denominator earlier measurements.

I have no doubt that this field is capable of furnishing large quantities of gas for outside area, particularly if the operators were to handle their wells in what I consider, a proper way, as outlined later in this report.

COFFEYVILLE REPORT.

(Newspaper Clipping.)

"Coffeyville, Kans., Nov. 10th.—The local gas situation is reaching a serious condition in this city so far as the factories are concerned. The Coffeyville Window Glass Company, the

largest institution of its kind west of the Mississippi, has been without sufficient gas most of the time since cool weather set in and the management is now contemplating the shutting down and removing to Cleveland, Oklahoma, unless they can get more gas."

The Coffeyville Field, as herein included, covers the area from a few miles east of Coffeyville to six or eight miles west. In fact, it might as well reach to Tyro, where a few high grade wells have been obtained. Tyro, however, lies in between Caney, on the west, and Coffeyville on the east. Gas was first developed immediately under the town of Coffeyville and a very considerable pool was encountered, which supplied the city was gas for a number of years. Later, a narrow, dry streak was found to the west, but still farther west an excellent gas field was developed. This in reality, as already explained, marges into the Independence Field.

The original pressure of the field to the west of Coffeyville was very high, quite a good many of the wells going beyond 400 pounds

rock pressure. The volume, likewise, was great, some of them going up to seven or eight million cubic feet per day, and doubtless would have gone much higher, had the drillers happened to have used larger drill bits in the sand. The adding machine ribbon, Vol. II, page 11, shows these averages.

At the present time the field is almost exhausted; many of the large factories at Coffeyville have been using oil for fuel for more than a year. Under such circumstances, it was deemed unnecessary to go to the labor and expense of getting details of present conditions when the general facts were so well known.

It is entirely impossible for the Coffeyville Pool, as herein described, to furnish any gas to supply outside pipe lines.

CANEY POOL.

The Caney Field lies to the east and southeast of Caney and passes continuously southward into Oklahoma and merges with the Copan pool.

The Caney pool at first was a most remarkable one, inasmuch as the wells gave tremendous pressure and large volume. Had the wells been drilled from eight to nine inches in diameter within the gas sand as were some of the large Independence wells, doubtless they would have been stronger than the latter. Their great depth, from 1500 to 1700 feet, gave a strong rock pressure. When these monster wells began coming in, it seemed as though there would be no possibility of handling the supply of gas. The Caney Field, however, proved to be one easily exhausted, because the sands were not very extensive and the Field, therefore, could not be extended for many miles in any direction.

The adding machine ribbon in Vol. II, page 12, gives the original pressure and volume for a few of these wells. At the present they are gone, and just recently the town of Caney voted bonds to defray the expense of a pipe line to a new small pool a few miles to the southwest in Oklahoma.

MONTGOMERY COUNTY POOL.

As already explained, the public and official records made by the County Gas Inspector, and now on file in the office of the Register of Deeds in the Court House at Independence, have been kept in such a manner that it is difficult and laborious, and therefore expensive, to gather detailed figures regarding the present condition of each individual pool in Montgomery County. It is advisable, therefore, to handle these figures by themselves, because they are very instructive, and, therefore, important. The ribbons from the adding machine are exhibited in Vol. II, page 13, for the condition of pressure and volume for the entire county, and on page 14 for the present condition in pressure and volume. It will be seen that a total of 681 wells now have an average pressure of 56 pounds per well, while 389 have an average of 100 pounds. Likewise, the 389 wells have an average capacity of a little over one million one hundred and ninety-one thousand cubic feet per day.

This county, principally from the Indepen-

dence Field, is capable of supplying relatively large amounts of gas for at least one more year, as already mentioned under Independence, page —this volume.

OKLAHOMA

CALIFORNIA POOL.

This Pool occupies an area long north and south, lying entirely within range 16, just west of Elliott, Lenapah, Delaware and Nowata. Gas has not been found throughout the entire area but a considerable amount of it has been developed.

This is a new pool and as a result one can hardly judge of its capacity. It is not very promising, however, because the sand is exceedingly variable in porosity, and the flow correspondingly variable. Mr. Sealy L. Brown supplied the figures given on adding machine ribbon, Vol. II, page 15, which shows that 24 wells have an original rock pressure of 373 pounds and an original volume averaging 3,426,000 cu-

bic feet. This autumn the Kansas Natural has connected up with a large number of these wells and is now using from them. I cannot believe this field will amount to much. It seems to be a southern extension of the Coffeyville, which in turn is a southern extension of the great Independence field. The gas is growing weaker from the southern end of the Independence. field southward, and still further, the variable condition of sand and its general fine grained characteristics prohibit, in my judgment, ever becoming very noted. It is safe to assume, however, that it will render fair service for the Kansas Natural pipe lines for from one to three years.

COPAN POOL.

This pool lies around Copan and extends northeast and virtually merges with the southeast part of the Caney pool, as already described. The eastern and northeast portions of the Copan pool originally was a wonderful gas area. Here the famous burning Caney well existed and quite a number of others perhaps equal in vol-

ume. The field was largely drawn upon by the Wichita Gas Company. Add to this an amount taken from Caney and an amount consumed by the Kansas Natural, and we have the present condition of exhaustion. A few detailed statistics are found in Volume 2, page 16.

A most interesting condition exists in this field at this very time. I have private information to the effect that the Kansas Natural is now experimenting with some of the wells considered exhausted and find that they can exhaust the water by pumps, so as to revivify the wells. My information is that at least one well has been brought up to a capacity of one million cubic feet per day, which, three months ago, was looked upon as being hopelessly gone. This illustrates well a belief I have had for years, and which is expounded more at length in a later part of this report. It is difficult to give even an approximate estimation as to what effect this will have on the life of the gas field.

BARTLESVILLE & HOGSHOOTER POOL

By right this pool should be discussed under

two headings, one for Bartlesville and one for the Hogshooter Area. It seemed impossible to gather statistics separately without incurring a greater expense than seemed desirable. For our purpose it does not matter, as sufficient facts are at hand to illustrate the two areas, even though they are not entirely separate.

BARTLESVILLE.

Bartlesville proper includes a gas field entirely surrounding the city. It reaches to the east three or four miles and to the west well into the Osage. It has about an equal extent north and south, aggregating an area from five to six miles across. A few years ago Bartlesville was entirely supplied from this local area, the pipe lines being very short. A considerable quantity of gas was found in the Osage territory near at hand, by parties drilling for oil. They considered themselves fortunate if they could sell gas to Bartlesville at almost any price. Later, when manufacturing industries began to arrive it was soon found that this limited area was not sufficient for the demands, and short

pipe lines began building from different places. Early this last autumn, for example, an eight inch pipe line was laid from the northern end of the Hogshooter Field into Bartlesville, principally to supply the smelters.

The wells in the Bartlesville pool are relatively deep, from 1300 to 1500 feet, and the pressure correspondingly high originally. The sand in general was quite coarse and very strong wells were obtained. At the present time they are largely exhausted, as evidenced from the outside pipe lines just mentioned.

HOGSHOOTER.

The name Hogshooter is applied to a wonderful gas area occupying six miles east and west and eighteen or more miles north and south, in Range 14 and Townships 24 to 26 inclusive. A small stream named the Hogshooter rises in the northern portion of the area and flows almost straight south near the western part of the pool, hence the name of the gas pool.

Gas developments began in the Hogshooter

area a number of years after developments had been well under way around Bartlesville. For a time no one could find a market for his gas and as a result no one seemed to care about saving it. Recently, however, a number of pipe lines have reached the area, the Kansas Natural entering this field in the autumn of 1910. See Vol. III, page 6. Simultaneously, or earlier, the Wichita Pipe line got into the same pool, and the Quapaw pipe line, which carries gas eastward to Joplin, now draws gas from the northern end of the Hogshooter area. Popularly, everybody is talking of getting gas from the Hogshooter and they come very nearly doing it. It is estimated that during the first three months of 1911, the entire Hogshooter area had a rock pressure decline of a pound a day on account of the excessive draft made upon it. See affidavit of Harry H. Breene, Vol. III, page 118.

I was able to gather quite a supply of detailed statistics set forth on the adding machine ribbon, Volume II, page 17, to which reference should be made. This is one of the four largest

fields ever opened up in the Mid Continental Field. Many people think it is stronger and more productive than either of the three Kansas fields, while others think it will never surpass them, and hardly equal them. Be that as it may, it is well worthy of careful study. The affidavit of Harry Breene should be carefully considered, also the letter with list of wells belonging to the Henry Oil Company, Volume III, pages 114 to 117, and equally the several letters or reports by the Hon. C. H. Kerr, Volume III, pages 99 to 114. In this connection also certain maps in Volume IV should be given careful attention. Map No. 3 represents the northern end of the Oklahoma area showing the gas wells in the Copan pool as already explained. A legend is on the map which makes it intelligible. Map No. 4 lies to the south of No. 3 and shows there is a break in the gas production between the Copan field and the north end of the Hogshooter, with but few gas wells in the area shown. Township 26, Range 14, on this map, is the north end of the Hogshooter district, with the northeast

corner reaching across a little into Range 15. Map No. 5 exhibits the main part of the Hogshooter area as now developed. Here is a line of monster wells in Range 14, from the southern portion of township 26 well down into township 24.

The Hogshooter area is interesting in many ways. Structurally it is on a mild, anti-clinal ridge, with the rock strata dipping away to the east and to the west from the middle of the area. It will be seen also that all along the borders on both the east and west sides already wells are becoming exhausted by being filled with water. Sooner or later, the whole area will be drowned out by water rising in the wells after the gas is exhausted.

It is my best judgment that with all the pipe lines drawing from the Hogshooter area during the present winter, and as they are sure to do in the future, unless something can be done to make them take better care of their wells and reduce the draught put upon

them, this area cannot last at the outside more than three more winters and probably little more than two more winters. The pipe line carrying gas to Muskogee and intervening cities, draws from the southern end. The Wichita pipe line, the Quapaw pipe line, the Portland Pipe line, and the Kansas Natural pipe lines are drawing from the north and central portions. The Oklahoma City pipe line now is connected with the extreme south and is sure to extend its lines northward until it gets into the same area with the others.

At present only a few miles separate the southern end of the one from the northern end of these two pipe lines.

COLLINSVILLE POOL.

The Collinsville gas area lies principally to the east and southeast of Collinsville.

Here is an area quite spotted in character, as dry wells are pretty well interspersed with productive ones, the depth is comparatively great, and as a result the rock pressure is high,

averaging over 500 pounds. The original volume likewise was great, crowding the 20,000,000 mark, but little gas has been taken from this pool. A pipe line supplying Muskogee gets a part of its gas from this area. The village of Collinsville, of course, is supplied, and recently a number of large manufacturers are located there. Already the pressure and volume is showing a decline. See Vol. II, page 18.

It is difficult to estimate this area and doubtless good judges would vary greatly with each other. The frequency of dry wells and the limited geographic extent of the area makes me think that it will have a history quite similar to that of Caney and Copan. If this is correct, should the large pipe lines enter the field, they would exhaust it within three years. I am not informed definitely as to the amount of gas carried southward towards Muskogee, neither am I informed definitely on the amount likely to be used by the factories now building at Collinsville. From the best I could learn, however, I am confident that they will make heavy

draughts, and will hasten very materially the exhaustion of the field.

TULSA POOL.

Tulsa is an area hard to define geographically, because the wells are located on all sides of it. The wells here are deep and hence have a high rock pressure, usually more than 500 pounds. The area is spotted with dry wells, in this respect very like the Collinsville field. In general the sand is finer grained, and less porous than at Collinsville, and very materially more so than in either of the four big pools already described. Some of the wells which have been drawn upon vigorously have decreased in pressure and volume rapidly. Quite a number of other wells are still at their original strength. I found a few wells connected with the Oklahoma City pipe line, and yet closed in, not being used at all.

This field is so far south and already being entered by the Oklahoma City Pipe Line Company, I consider it very doubtful as a possible feeder to the pipe lines carrying gas north.

SAPULPA POOL.

The Sapulpa Field is hardly worth mentioning. A few years ago a considerable amount of gas was obtained into the south and southwest of Red Fork and piped into Sapulpa and to the nearby places. At present this particular area seems to be almost entirely exhausted.

OKMULGEE POOL.

The Okmulgee gas area is in townships 13 and 14, almost 100 miles south of the south line of Kansas. No outside pipe lines have yet entered this area, and gas development has not been carried very far. Mr. J. E. McCready, of Okmulgee, helped me in gathering statistics from that area. He has been connected with oil and gas development all his life, having come west from Pennsylvania where his father before him was a well driller, and I place great confidence in his judgment. His letter, Volume III, page 113, is short, but pointed, and commits him to the belief that a much larger amount of gas will be developed in the vicinity of Okmulgee within the

next few years. It may seriously be questioned, however, whether gas from this far south will ever reach Kansas City. There is such a demand for it in the nearby cities to the south, southeast and southwest, that it seems to me probable that they will take all of the production.

For details regarding the Okmulgee area see Volume II, page 21.

THE FUTURE.

In considering the future possibilities of the Mid-Continental Gas Fields, the subject divides itself naturally into two parts:

First, the amount of gas which under most favorable treatment may be obtained from the present development and such future development as seems probable, and,—

Second, the manner in which the business as a whole is likely to be conducted, or, the human side of the proposition.

POSSIBILITIES FOR PRESENT DEVELOPMENT.

A careful analysis of every important gas

pool yet developed in this area is given on the preceding pages. Developments first began in Kansas, and migrated southward. Likewise, excessive use of gas first began in Kansas and migrated southward. Again, the Kansas Natural Company followed the same order in building their pipe lines as shown in the letter of Mr. Macbeth, Volume III, page 6. Gas was first piped to northern cities in the autumn of 1905 and reached Kansas City in the autumn of 1906. Throughout the winters of 1905-6 and 1906-7 the southern limit of the Kansas Natural Pipe lines was north of the north side of Montgomery County. During both of these winters, however, a pipe line from Montgomery County reached the Joplin area. During the summer of 1907 the pipe line was extended southward into Montgomery County. It should be noted that throughout the two winters, therefore, the fields north of Montgomery County supplied all the northern demand. It was not until the autumn of 1909 that this pipe line was extended as far south as Oklahoma. Previously, however,

the Wichita Gas Company had been drawing from the Caney field and a portion of the Independence field for their western customers. Neither of the pipe line companies claims to have brought anything from Oklahoma until after they received Government authority for the same. There is a rumor, however, believed by most gas men, that for at least a year previously, the pipes in Oklahoma in some mysterious manner connected with those on the north side of the State boundaries, so that a considerable amount of Oklahoma gas may have left the State before the autumn of 1909. Be this as it may the Hogshooter pool was not reached by the Kansas Natural Company until the autumn of 1910 so that the northern customers have been using Hogshooter gas only one winter. With these facts before us, it seems to me it is unsafe to assume that we could have a good supply of gas during the coldest of weather longer than one more winter, should any drilling operations cease at once. It is my judgment that the gas fields would not be entirely exhausted in so

short a time, but that the reduction would be so great it would be very unsatisfactory. I have faith to believe that drills will be kept going and, in the aggregate, a great deal more gas will be found in the pools already developed probably fifteen to twenty-five per cent as much as has yet been developed, so that with the pipe lines as now situated, and the business conducted as at present with all the factories supplied as they now are, I have faith to believe we can count on gas quite safely for two more winters and possibly three.

FUTURE DEVELOPMENT.

No one question has received greater consideration at my hands during the last few years than that of the probable development of extra gas fields somewhere throughout the Mid-Continental area. It is not a hasty conclusion, therefore, nor one arrived at without the broadest investigations, when I say that it seems to me entirely improbable that no more great gas fields will be uncovered within the area under

consideration. Let us look at the situation as it actually is.

In Kansas, gas has been found in considerable quanties far north of the area covered by wall chart No. II. It has been found at Garnett and Osawatomie and Paola and Wyandotte, and many places in between. None of these discoveries, however, have been of sufficient magnitude to have any considerable importance in supplying a million people. Their importance, rather, is on account of the encouragement they gave the prospectors. Wells have been put down east far into Missouri and west as far as Abilene and beyond. McPherson has been prospecting and so has Newton and Wichita and Arkansas City, and all the territory between is full of holes in the ground. Now, the whole history of development here and elsewhere is, that we may and do find many dry holes. It seems reasonable to me, however, that if any excessively large pools existed throughout the area named, some of these drill holes would have found them. From geological structure a good many people believe

Flint Hills area in Kansas to the west of Chautauqua County would prove very productive. Fortunes were lost on this faith. A little pool was found at Elmdale, another at Augusta, another at Dexter, another at Winfield, another at Arkansas City, and across the State Line south about Blackwell, Oklahoma; but none of them would anyways near compare with a third rate pool in the gas fields proper. How, then, may we expect to find other big pools in Kansas at all comparable to the ones already developed?

When we cross the State boundary southward into Oklahoma we find a series of conditions similar to those just described for Kansas. Prospecting has been done to the east all the way from Miami south to Muskogee and beyond. A little gas and a little oil have been found in many places, often gas enough to supply villages for years in a moderate way, but nothing on a grade scale. To the west prospecting likewise has been carried on throughout practically the entire Osage area, and south to the Texas line and beyond. Recently, a very promising field for oil

and gas has been opened up about Wichita Falls, far to the south, too far to have any bearing upon a supply for Kansas City. The area has been prospected so much that if any large new wells existed comparable to those already developed, it seems to me we would have evidence of it by this time, particularly as in every instance where these little discoveries were made, drills were operated until the area practically was surrounded and limited.

We are thrown back, therefore, into the Mid-Continental field. The several gas pools here are not connected with each other, due primarily to a lack of continuity in the gas bearing sands. This very condition which is fundamental geologically makes many expect that in the aggregate quite a number of lesser wells will be found, pools which on account of their smallness in some way have been missed by the widespread prospecting already referred to. I shall be very much surprised if such does not prove to be correct. It is difficult and almost vain to try to estimate in advance how much such discoveries

will aggregate, and yet with the vast amount of capital invested in pipe lines for the delivery of gas and in house fixtures in the homes of a million people such an estimate is desirable provided any substantial facts can be found upon which to base them.

We know in general that considerable gas is found south of the big pools, such as the area about Okmulgee described by Mr. J. E. McCready, Volume III, page 113, also Volume II, page 21, and Volume VI, page 382. Small developments about Henrietta add strength to this conclusion. It need not be surprising if very considerable developments await us in these areas. Whether or not the Kansas Natural will be able to push its lines southward and receive the benefit of such developments is a question of business or human desires, rather than of gas applied.

Summing up all the conditions and evidences available to the writer and striking the best balance sheet, so to speak, possible, I think it

probable that we will have developed in the future an aggregate gas supply ranging from fifteen to thirty per cent as much as has already been produced, that this will come principally from lesser pools dotted here and there throughout the present known great areas, and partially from developments carrying the areas southward, but still within reach of the pipe lines of the Mid-Continental fields. It should be added further, that logically one may expect the big pipe lines to become empty long before these little fields are entirely exhausted, and that, therefore, for a decade or more after outside areas receive no more gas, many of the towns and villages within the gas area may have a reasonable supply for domestic use.

THE HUMAN SIDE OF THE PROPOSITION.

We have now reached a point in this discussion where it is desirable to give attention to the human side of the question. What is likely to be the attitude of the big companies vending gas? Are these companies entirely independent of each other or are they in a way related and

inter-dependent? Possibly the writer was not expected to give attention to this subject. But he finds himself brought up facing it, so that it cannot be avoided. Are we to expect that the Kansas Natural Gas Company will exert every effort to supply all of its present customers with gas at the prices now prevailing, regardless of whether or not such a procedure would be to the financial benefit of the company? I know of only one way to consider this, and that is to assume that the management is human, the same as the management of other concerns. With this assumption follows the conclusion that they will pay more attention to their own financial betterment than to accommodating their customers. First of all, they should and probably will endeavor to cut off the supply of gas to factories where the market price is less than one-half that charged for domestic consumption. It is strange to me, indeed, that this has not been done earlier, for it is well known that all the large companies have become alarmed as to the gas supply. In the face of this alarm, however, they

have gone on selling gas in large quantities to large factories long after they saw the gas supply was very materially limited. In my home town, for example, Lawrence, Kansas, they supplied a brick factory with gas throughout the summer of 1911 and up to the end of October, at the rate of ten cents per thousand provided the consumption amounted to more than 200,000 cubic feet per month. The Quapaw Company, throughout the present autumn is advertising gas to be used for steam producing purposes, throughout the Joplin district. Private information from that area assures me that this factory gas is sold for one-half the price charged domestic consumers. The Quapaw Company in a measure is independent of the Kansas Natural Company. I am told, however, by consumers that in some instances where the gas is drawn from one individual pipe, the consumer settles with one of these companies for gas used in a gas engine, and with the other for gas used under steam boilers.

The legal aspect of contracts also enters the

problem. I understand that litigation has already begun in some quarters to compel the Kansas Natural to continue its supply of gas to factories. Still further, certain State officials are cognizant of certain actions of the gas companies, and are complicating the problem of prophesy as to future gas deliveries. Where all of these various factors, human in character, may lead us, the Good Lord only can tell.

From the standpoint of the domestic consumer one thing should be done, and that should be done quickly. Gas should be shut off from every factory of every description by every gas vending company throughout the entire area supplied with gas from the Mid-Continental Field. Natural gas is too valuable for domestic use to permit of its being used in factories. A great abundance of fuel oil and coal at reasonable prices are available to the factory man, here as elsewhere. Why should this choicest of all fuels be consumed in the grossest operations, when it is so convenient for our homes and fire-sides?

And still further, why will any vending company sell such large quantities for factory purposes at a price of half, or less than half, what they can get for it in the private homes of a million people? It seems to me that from every consideration of good business, such should not be done in order that justice may be meted out to the creditors of the vending companies. On the other hand it is almost a matter of emergency sufficient to claim that the public good demands the reserving of this choicest of all fuels for the highest grade of consumption.

Another phase of the human side of this subject is the method of handling the property. It seems to be the business policy of the Kansas Natural Company to limit its gathering lines as much as possible, and as a result to draw on its wells as rapidly as possible. This is exceedingly bad, because it curtails the life of a well, not only in time but gas supply. Already almost all over the gas fields, wells are being abandoned, which, in my opinion, would have produced much more gas had they been handled

properly. Reference has been made to successful effort in the way of reviving some of these wells. If they can be revived, then they were not exhausted of gas before abandoned. The excessive draught made upon them evidently so decreased the pressure that water existing under artesian conditions rose into the wells shutting off gas which should have been won, before water was allowed to rise in the well. This is a subject of field management which has an important bearing on the life of the gas fields and the amount of gas obtained therefrom. It is apropos here, because it is an important factor entering into the problem of the durability of the gas supply.

Much complaint is made by development companies and private individuals because they cannot find a suitable market for their gas. Immediately after it was given out by the press that I was employed to investigate the gas situation letters began pouring into me from development companies and private owners, some of which were complaining bitterly that none of

the great pipe line companies would buy their gas at remunerative prices, and assuring me that an abundance of gas still existed to supply the public market for many years. These statements had an element of truth in them, and in most cases an element of error. In mentioning the capacity of the wells, these correspondents invariably mentioned the original capacity. Such is the list of wells owned by the Henry Oil Company, Volume III, page 16. They did not mention that the pressure had gone down throughout all of those fields materially reducing the available gas in their own wells, even though they may have sold nothing from them. Gas men understand that a closed in well may lose its gas, when neighboring wells are drawn on heavily, although none escapes from the well in question. This is well illustrated in the report on the Collinsville area, Volume VI, page 375, where a number of wells with an original rock pressure of 540 pounds have been reduced to about 360 pounds without any gas whatever being drawn through the wells in question. This

makes it so that an owner of a good gas well must sell his gas and have it delivered while his neighbors are delivering theirs or he will lose it entirely without compensation. Accordingly there is much dissatisfaction here and there throughout the entire area, because some people are able to sell gas to the big companies and others are not. As far as I am able to determine the proximity of wells to pipe lines is the main factor controlling the choice of wells to be used. It seems to me that a proper management would result in some way in carrying the feeding pipes to a much larger number of wells, so that the draft upon any individual well would be reduced, and the whole field treated in such a way that the maximum amount of gas would be won, maximum good rendered developers, and the maximum accommodations afforded consumers.

PIPE LINE AND PUMPING CAPACITIES.

The first arrangements made between the Public Utilities Commission and myself for this investigation did not include an investigation of the transportation possibilities of the Kansas

Natural Gas Company. Later, however, this was added to the investigations in hand. I called to my assistance Mr. T. F. Walker, Professor of Mechanical Engineering in the University of Kansas, who is abundantly able to conduct such an examination in an accurate and scientific manner, and to report upon the same. Due to the lateness of this arrangement, Professor Walker at this writing, November 21st, 1911, has not yet completed his work, although he has it well in hand. Enough has been accomplished, however, to show conclusively that with proper management the pipe lines and pumping stations are about as much as the known gas supply would warrant the company in installing, or, as there is any need of installing. It is a known fact in mechanics that if the well pressure declines, the capacity of the pumps likewise decline, so that the pumps now installed have a varying capacity, decreasing with the pressure under which the gas is delivered to them. Should the pipe lines be extended to the south very materially, it is quite possible addi-

tional small compressor stations might be added to advantage in order to maintain the pressure in the main pipes delivering gas to the big pumps at the Graham Station. Profesor Walker's report will cover the entire problem of gas transportation.

Respectfully submitted,

(*Signed*) ERASMUS HAWORTH.

Lawrence, Kansas, November 21*st*, 1911.

STATE OF MISSOURI, COUNTY OF JACKSON, *ss.*

I hereby certify that the attached is a true and correct copy of Volume No. 1 of the report submitted to the Public Utilities Commission of Kansas City, Missouri, by Professor Erasmus Haworth on the condition of the Mid-Continental Gas Fields, which said volume contains the conclusions reached by his investigation and a short

statement of what may be expected of each gas "pool" in Kansas and Oklahoma.

CHESTER C. SMITH, *Secretary.*

Subscribed and sworn to before me this 20th day of December, 1911.

(SEAL.)

THOMAS HARRINGTON,

Notary Public for Jackson County, Missouri.

My commission will expire Sept. 17, 1913.

NOTICE.

HONORABLE E. L. SCARRITT,
Kansas City, Missouri.

HONORABE D. T. WATSON,
Pittsburg, Pennsylvania.

HONORABLE EUGENE MACKEY,
Pittsburg, Pennsylvania.

HONORABLE J. G. JOHNSON.
Philadelphia, Pennsylvania.
Of Counsel for Appellees.

You and each of you are hereby notified that on Monday, the 8th day of January, 1912, or as soon thereafter as the same may be heard, the appellants will present the above application to the court.

CHAS WEST,
Attorney General.

Office Supreme Court, U. S.
FILED.
FEB 19 1912
JAMES H. McKENNEY,
Clerk

Supreme Court of the United States

October Term, 1911

No. 914

CHARLES N. HASKELL, CHARLES WEST, JOHN J. SHEA, et al.,

Appellants.

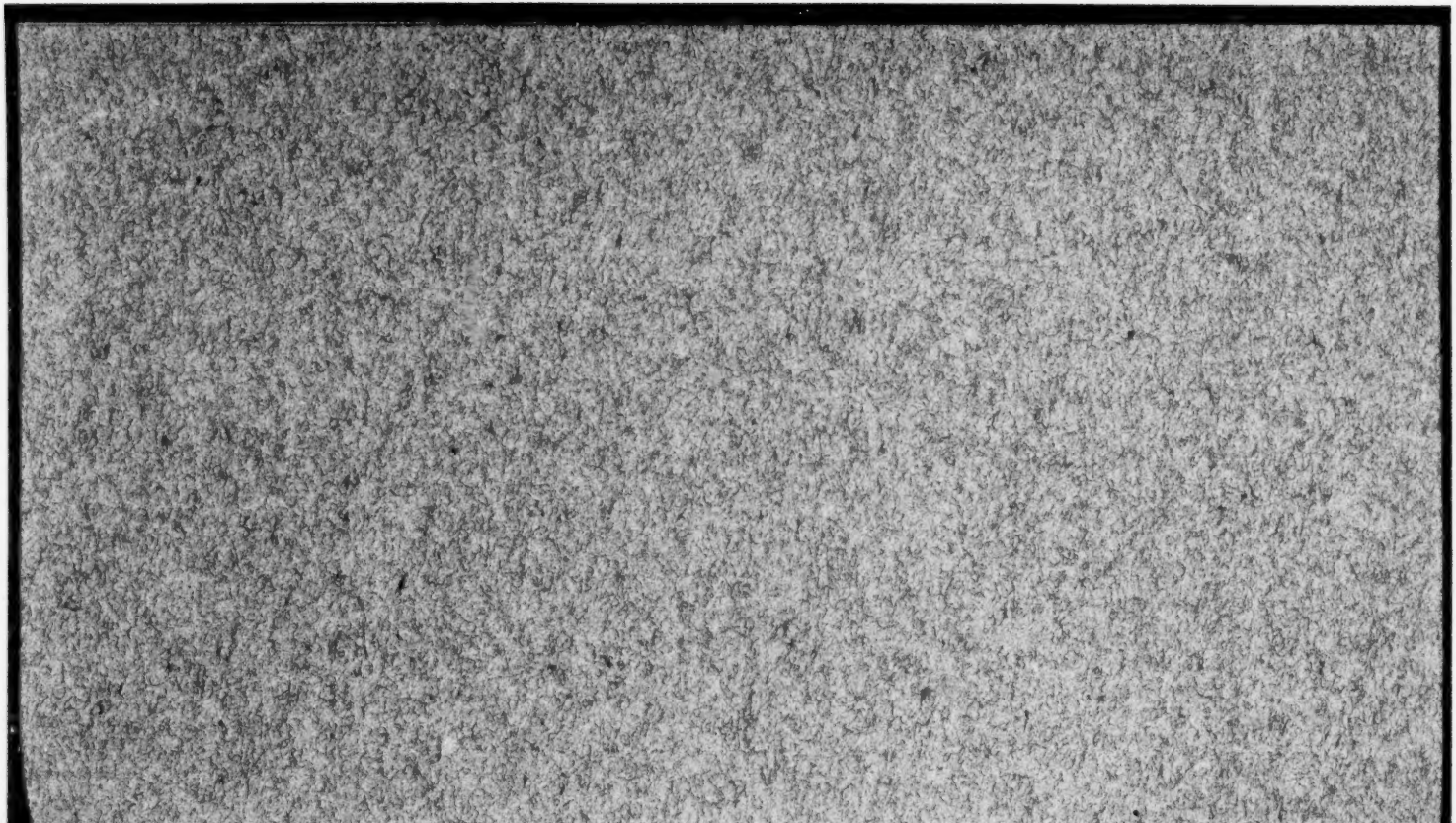
v.

THE KANSAS NATURAL GAS COMPANY, THE MARNET MINING COMPANY, AND A. W. LEWIS.

Appeal from the Circuit Court of the United States for the Eastern District of Oklahoma.

BRIEF OF APPELLANTS

CHAS. WEST,
Attorney General of the State of Oklahoma,
Attorney for Appellants.



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Appeal from the Circuit Court of the United States for the Eastern District of Oklahoma.

BRIEF OF APPELLANTS

Same Case As West v. Kansas Natural of Last Term.

This is the same case as West, etc. v. Kansas Natural Gas Company, et al, 221 U. S. 229, decided last term as No. 916 of the October Term 1910. The change in the name was due to stipulation made on the former appeal.

It is pending now on appeal from an order overruling a motion to modify the decree of the lower court, to conform to the opinion of this court. The case was decided May 15, 1911, and on May 29, 1911, the last day of the Term, (as soon as possible after the decision), a motion was filed and presented to modify the opinion of the lower court to conform to the opinion of this court. On May 29th, 1911, probably because the Term was about to close, this court, without disposing of the motion then pending before it, by modifying or refusing to modify, ordered that either party be at liberty to apply to the court below for modification so as to conform to the opinion. Accordingly on the 11th day of July, 1911, the mandate of the Supreme Court of the United States in said cause was filed in the lower court, (page 1 of the Record), and on the 19th day of July, 1911, the defendants below pursuant to the order of May 29th, of this court, filed their motion to modify, (page 4 of the Record).

Questions Involved.

1. The opinion of the lower court held that the natural gas law of the State of Oklahoma, adopted in 1907-8, (Chapter 67 of the Session Laws of that year) were void *in toto*. It is contended by these appellants that the opinion of this court held that at least sections 5, 6 and 7 of said act are valid. The opinion of the lower court enjoined the appellants from enforcing any of the provisions of said act. One of the questions is, should not the opinion be modified so that the injunction against the enforcement of sections 5, 6 and 7 may be dissolved.

2. The order of the lower court enjoined the defendants from enforcing not only Chapter 67 of the Session laws of 1907-8, but any other statute of the state, or any other common law of the state, by suit or otherwise, which might in any way interfere with the construction or maintenance or operation of the company's gas lines. These appellants contend that the opinion of this court in no wise justifies such an injunction, and that this part of the decree of the lower court should be entirely eliminated.

3. These appellants contend that the opinion of this court held that the law of the state could not discriminate against foreign gas pipe lines seeking to do an interstate business, but that the opinion of this court did not pass upon and did not mean to hold that a pipe line which subserved the public policy of the state in the distribution of gas to consumers in the state, could not legally receive from the state the free use of the state's property, to-wit: its highways, for the operation of its business, and that other companies who refused to subserve this policy, and refused to serve the consumers of gas in the state, might be denied the free use of such highways, and that this would not be a discrimination but a legal distinction, and that accordingly, at this time, the decree should not be for the plaintiffs below.

4. These appellants contend that the former opinion of this court did not hold or mean to hold that an interstate trader desirous of plying his business might, without the right of eminent domain being accorded to him, either by the United States or by the State, be authorized to confiscate the property of the state for the use of his business without compensation, to-wit, the use of the state's highways, but that the opinion meant that if the right of eminent domain should be accorded by either the United States or the State, then upon payment of compensation, that the companies involved in this action might pursue their interstate business, and this until such right of con-

demnation be granted, the suit should be stayed and the temporary injunction dissolved.

How the Questions Arise.

The motion filed in the lower court was as follows: (p. 5 of the Record):

> "1. That that portion of the decree of this court which finds, adjudges, and decrees that Chapter 67 of the Session Laws of Oklahoma, 1907-08, passed and enacted by the legislature of said State of Oklahoma and approved by the Governor of said state on the 21st day of December, 1907, is unreasonable, unconstitutional, invalid and void and of no force and effect whatever, be modified so that sections 5, 6 and 7 of said Chapter 67 be excepted, and said sections 5, 6 and 7, be decreed valid and in full force and effect.
>
> "2. That that portion of said decree which restrains the defendants and each and every of them, their representatives, agents, servants, attorneys, workmen and employees, and all other persons whomsoever, advised, inspired, influenced, incited or prompted by them, or either of them, from in any way interfering with the laying, building and construction of plaintiffs' pipe lines, or from in any manner instituting, prosecuting, or conducting any suits, or suing out any writs of process in any of the state courts of the State of Oklahoma against the complainants or any one of them, for the purpose of restraining, enjoining, or interfering with either of them in the laying, building, construction, maintenance or operation of any gas pipe line either under the authority of said Chapter 67 of the Session Laws of Oklahoma, 1907-08,

or under any common law right, rule of action, or unwritten law of the State of Oklahoma be modified so as to apply only to pipe lines which are laid, constructed and maintained in accordance with the provisions of said sections five, six and seven of said Chapter 67, and which in no way violate any of the provisions of said Sections five, six and seven.

"3. That that portion of the decree which restrains defendants from proceeding against plaintiffs because of its violation of the provisions of said Chapter 67, which prohibit the transportation of gas by pumps, through pipe lines, under a greater pressure than that authorized by law, should be modified to conform to the opinion of the Supreme Court of the United States, which holds that the state may control the method by which gas is taken from wells in the state and transported through the state, by forbidding the use of pumps.

"4. Said Chapter 67 is modified by the Act approved March 27, 1909 (Art. 2, Chapter 26, Session Laws 1909; Art. 3, Chap. 75, Compiled Laws of Oklahoma, 1909, Snyder), Section 11 of which prohibits the use of pumps or other artificial means in the transmission of gas, when used to the injury of other corporations producing or consuming natural gas in the same gas district. The opinion of the Supreme Court holds that this is a proper subject of regulation by the State, yet the decree herein enjoins defendants from imposing this valid regulation and for that reason is inconsistent with the opinion of the Supreme Court.

"5 Said Chapter 67 as modified by said Act of March 27, 1909, prohibits the use of gas in such quantities as may affect gas pipe line corporations,

gas consumers and gas producers in the same gas district, by reason of taking an undue quantity of gas or more than its proportionate share, due consideration being had for the size, capacity, pressure, facilities and powers of persons similiarly situated, and the opinion of the Supreme Court in effect holds that this is a valid matter for state regulation, yet the decree herein enjoins defendants from enforcing these provisions of the law, and to that extent does not conform to the opinion of the Supreme Court.

"6. The Supreme Court, in its opinion, does not hold that an interestate trader without being given the power of eminent domain and without compensation, might confiscate the property of the state, to-wit, the highway by placing its pipe lines in the highways, without the consent of the State, and against its will, yet the decree of this court enjoins defendants from bringing any suits to prevent such usurpation of power, and to this extent does not conform to the opinion of the Supreme Court.

"7. The Supreme Court, in its opinion, does not hold that the defendants can be enjoined from bringing any suit under any other statute, common law right, rule of action or unwritten law whatsoever, and the decree herein, is in this respect inconsistent with the opinion of the Supreme Court.

"8. The Oklahoma gas laws give special privileges in the highways of the state to domestic corporations, which serve the public, which privileges are withheld from those which do not render such service in return for such franchise. The plaintiffs allege that they intend to do no business in Oklahoma, and therefore can render no service to the public, in return for the privilege of using the high-

way of the state. Plaintiffs, by transporting gas by artificial means, thereby taking more than their pro rata share of the gas from each of the gas districts of the state, in this way prevent or make it impossible for the domestic corporations of the state to give to the public in Oklahoma a sufficient amount of gas to supply its needs. The decree herein, which restrains defendants from bringing any action against plaintiffs under any law, to prevent them from laying and operating their pipe lines, under any and all circumstances, has the effect of prohibiting the State from making a grant to domestic gas corporations, of privileges in the highways of the State, in return for a service to the public, and in this respect is inconsistent with the opinion of the Supreme Court.

"Defendants therefore move the court that said decree be modified as in the manner hereinbefore set out and that the court will please to make such other order in the premises as to the court shall seem meet."

To this the complainants below filed what was both a demurrer and an answer (p. 8 of the Record). It is immaterial to consider at this time this answer, because the lower court sustained the demurrer irrespective of the allegations of new matter contained in the answer, and refused to modify its decree (p. 23 of the Record).

Lower Court Refused to Modify.

The essential parts of its order refusing to modify were as follows:

"And the court having heard oral argument, both in support of and against the motion to modify

the decree, and without hearing any proof in support of or against the granting of said motion, took the matter under advisement, treating the plaintiffs' answer as in the nature of a demurrer to said motion to modify the decree.

"And now on this 26th day of October, 1911, upon consideration thereof, and upon consideration of the entire record in this cause up to the entry of the final decree, now sought to be modified, and of the opinion of the Supreme Court, it is ordered, adjudged and decreed that the motion of defendants filed herein on the 19th day of July, 1911, to modify the final decree rendered herein on the 1st day of February, 1911, be and the same is hereby overruled." * * *

Further, the same matter appears again in the decree of the lower court entered on the 6th day of December (p. 25 of the Record).

"And the court having heard oral argument both in support of and against the said motion to modify the decree, and without hearing or considering any evidence in support of or against the granting of said motion, and without considering any affidavits and exhibits thereto filed therein, took the matter under advisement, treating the plaintiffs' pleading in the nature of a demurrer to modify the decree; it being considered by the court at the time, and understood by all parties, that no evidence would be considered by the court in determining the demurrer, but that in case the demurrer was overruled, the court would set a day for the hearing of evidence for both sides. * *"

Thereupon, the motion to modify was overruled.

An application for appeal was filed and allowed the same day. Specifications of error (p. 28 of the Record), and appeal bond approved and the cause filed in this court on the 30th day of December, 1911, and advanced upon motion of the appellant.

The questions thus are:

(1) Whether the original decree did enjoin the enforcement of Sections 5, 6 and 7 of Chapter 67 of the Session Laws 1907-08 of the State of Oklahoma; and

(2) Did the decree of the lower court enjoin the enforcement of any other laws, either constitutional or statutory provisions, or common law; and

(3 What was the meaning of the opinion of this court with reference to the use of the highways by these companies who had acquired the use of the same neither by involuntary condemnation, payment of compensation, nor voluntary grant; and

(4) Whether the State had the right to make a distinction in the grant of its highways to one who served the gas consumers of the state and refuse it to one who would refuse and abuse that service.

The Original Decree Did Enjoin Enforcement of Any Law which Might Interfere with the Company's Business.

The portions of the original final decree in the lower court to which exception is taken, can be found at page

134 of the Record in No. 916 of last term, and are as follows:

"3. The court doth find the issues and equities herein in favor of the plaintiff, and that the plaintiff is entitled to the relief prayed for in the bill of complaint herein; and doth find, adjudge and decree that chapter 67 of the Session Laws of the State of Oklahoma of 1907-8 passed and enacted by the Legislatue of said State of Oklahoma, and approved by the Governor of said State on the 21st day of December, 1907, and referred to in plaintiff's bill of complaint herein, is unreasonable, unconstitutional, invalid and void and of no force or effect whatever.

"4. The temporary injunction heretofore ordered and entered herein is hereby made permanent and perpetual, and the defendants and each and every of them, their representatives, agents, servants, attorneys, workmen, and employees, and all other persons whomsoever, advised, inspired, influenced, incited or prompted by them, or either of them, are hereby forever restrained and enjoined from committing any of the acts complained of by complainant in its, or his, bill of complaint, and from tearing up or destroying, or in any way interfering with the laying, building, and construction of complainants' pipe lines, or any of the pipe lines referred to in the prayer of complainant's bill of complaint, in, through, or out of the State of Oklahoma, by reason of any of the terms or provisions or contents of Chapter 67 of the Session Laws of 1907-1908 passed and enacted by the Legislature of the State of Oklahoma, or by reason of any other claimed authority or statute of said state, or common law right, rule of action or unwritten law whatsoever; and from in any manner institu-

ting, prosecuting, or conducting any suits, or suing out any writs of process in any of the state courts of the State of Oklahoma against the complainants, or any one representing it, or him, for the purpose of enjoining, restraining or interfering with either of them in the laying, building, construction, maintenance or operation of any gas pipe line either under the authority of said Legislative act contained in said Chapter 67 of the Session Laws of Oklahoma 1907-8 above referred to, or under any other law or statute of the State of Oklahoma, or under any common law right, rule of action, or unwritten law of the State of Oklahoma."

This decree of the lower court clearly enjoined appellants from proceeding by litigation (answer of appellant West, p. 112 record in No. 916 last term "that he intends acting under his duty as Attorney General to prevent solely by actions in competent courts," etc.) or otherwise to enforce

(1) *"Any of the terms or provisions or contents of Chapter 67 Session Laws of Oklahoma* 1907-8 (the Natural Gas Law); and

(2) *"Any other right, rule of action or unwritten law whatsoever"* which would interfere with appellees' pipe line business; and, also

(3) "from in any manner *instituting,* prosecuting, or conducting *any suits* * * * *in any* of *the state courts* * * * against the complainants * * * for the purpose of enjoining, restraining or *interfering with either of them in laying, building, construction, maintenance or oper-*

> *ation of any gas pipe line* either under the authority *of said Legislative act* contained in said Chapter 67 of the Session Laws of Oklahoma 1907-8 above referred to, *or under any other law or statute of the State of Oklahoma, or under any common law right,* rule or action, or *unwritten law* of the State of Oklahoma."

In other words, however the appellees may violate the laws of Oklahoma, either the statute laws of Oklahoma, or its common law, or any other law of that state, the operation, maintenance of their business, and the laying, building and construction of their pipe lines shall not be interfered with in any manner by suit or otherwise.

For instance neither the anti-trust laws, the corporation laws, the tax laws, nor any other laws of the state may be enforced if such enforcement may as a penalty for breach thereof interfere with the maintenance or operation of the business.

Case Decided on Bill and Answer. Admitted Facts.

These cases were decided upon bills and answers (Record p. 131 of No. 916, last term), and therefore, the facts as stated in the answer are the facts of this case, and no attention should be paid to the present efforts of the companies now to delay or confuse the case by assertions to the contrary whether contained in briefs or subsequent motions.

It will also be noticed that the lower court in passing upon the motion to modify bases its decision upon the case as it stood at the time of the final decree, and thus there has been no retrial on the facts and the original answer of these appellants still stands as the facts in this case and must so stand forever.

In the various briefs and motions filed by the company an attempt is made to draw a distinction between a suction pump and a compressor pump as applied to the facts of this case, but it will be found that the answer (Record p. 109, No. 916 last term) of appellant, which is admitted as the facts of this case, alleged at the time of the filing of that answer, to-wit: February 1, 1911,

Pumps Used by Companies Do Injure Wells.

> "That many of the most promising cities, such as Enid, El Reno, Lawton, Chickasha, McAlester, as well as many scores of smaller places capable, willing and anxious to obtain and use natural gas, are now without the same altogether. That in case the kind of pipe line proposed by plaintiff is constructed no further development of the natural gas business in the State so far as the supply of cities not now obtaining the same, will in reason be accomplished, and because of the relative smallness of the present lines to Oklahoma City, Guthrie, and Shawnee compared to plaintiff's proposed lines, will in the immediate future leave said cities without natural gas. That because plaintiff may outside the State of Oklahoma erect enormous pumping stations which they are now actually in the

process of constructing, they might reasonably and would inevitably render entirely useless all the present lines in Oklahoma and take away from the towns and cities in Oklahoma the entire practical use of their sole and natural fuel, *because when gas is removed by* the limited, prudent and natural rock pressure the nature and *formation of the gas and oil sand is not radically changed, but if large pumps to pump out the wells out of proportion to the rock pressure are used, as are now actually threatened by the plaintiff, the gas and oil sand is actually broken down as though shot with dynamite, or other violence, and the salt water thereunder, always to be found, at once drowns out the wells, where rock pressure has been too greatly or rapidly decreased."*

This would be clearly discernible when the nature of the gas, oil and salt water strata are borne in mind.

It appears from the answer (Record pages 108-9, 10 of No. 916, last term), that salt water, oil and gas are always found one lying above the other. Of course the gas on top and the oil between the other two. It would necessarily follow that if the pressure is removed from the top of the well that the gas would come out and that the oil and water would rise in the well faster than the gas would come out of the porous rock. The gas in the rock has to overcome friction and the gravity which holds down the oil and water of course will force the gas up. Therefore, if the pressure is taken off a well, either by allowing it to flow at its full force or by using a pump the effect upon the well is to cause the rock to break down as if shot with

dynamite and at once the salt water forms an emulsion with the oil and drowns out the well, rising to the top. Because a suction pump cannot do more than produce the atmospheric pressure of sixteen pounds to the square inch a suction pump can have no further influence on a well than could a compressor pump, and both the compressor pump and the suction pump can produce no greater effect than would be brought about by simply taking off the cap from the well and allowing the gas to come out as fast as it will.

Suction pumps are used where the gravity is against ascension, for instance, for oil and water; but where gravity produces ascension as in the case of a lighter substance such as gas, the use of a compressor pump to push on the gas so as to relieve the back pressure at the well, has upon the well all the effect that a suction pump would have if the contents of the well instead of being gas were only oil or water.

Therefore, the distinction sought to be made in their briefs by the company is an unreality.

This matter being clearly asserted in the answer stands admitted in this case and we cite the court to the statement of Professor Haworth, printed in the Application to Advance, not for proof of what is already proven,

but simply for illustration of what otherwise might be dark.

Professor Haworth (p. 21 of Aplication to Advance by Appellant) says:

> "3.—The properties of the Kansas Natural Gas Company particularly, and of other pipe line companies generally, are handled in a manner which tends to shorten unnecessarily the life of the field, and ultimately reduce the profits of the companies.
>
> "4.—Should the present methods of handling properties and vending gas be continued, two more winters, or three at most, is as long as we may expect natural gas to be delivered to Kansas City in sufficient quantities to equal present domestic consumption, unless future developments of new gas far exceed present indications."
>
> (p. 22).
>
> "5.—Should gas be denied all factories and reserved strictly for domestic use, and should gas properties be handled in a scientific manner, the entire community now reached by all pipe lines should have a satisfactory supply for from five to seven years."

Again, at page 29 of the application to advance in discussing the four great gas areas in the Mid-continental field he says, that three of them are largely exhausted and the fourth is failing rapidly.

At page 35, in discussing the Iola field he says, that

the Kansas Natural Gas Company is drawing on its wells harder than local consumers.

On page 38 in speaking of the Vilas pool he again calls attention to the fact that the wells of the Kansas Natural Gas Company have a considerably smaller pressure and volume than the average for the area, and then gives this significant explanation:

> "A number of private owners are complaining bitterly because they have no market for their gas. In such cases usually they are unwilling to accept the low price offered by the Kansas Natural."

On page 39 he says, speaking of the other wells:

> "This contrasts strongly with the pressure and volume of the wells belonging to the Kansas Natural, principally because, it is my opinion, the Kansas Natural wells are drawn almost to exhaustion."

And again (page 39) he says:

> "If, however, the policy of the Kansas Natural should be to exhaust the wells it now owns and buy no others, it can get but little more from this pool."

In speaking of the Independence pool (p. 46) he again speaks of this:

> "This tremendous drain, unequaled for any of the fields to the north, and the unusual ease with which gas may be obtained, due to the character of the sand, has made the exhaustion of this field surprisingly rapid."

As to the California pool in Oklahoma (p. 54) he says:

> "It is safe to assume, however, that it will render fair service for the Kansas Natural pipe lines for from one to three years."

On page 58 he calls attention to an affidavit of Harry Breene, who is the Inspector of Oil and Gas Pipe Lines in Oklahoma, and upon whose information the answer was filed in this case; who filed an affidavit in the lower court when the case went back for modification showing the facts of the then present condition, and upon the strength of his other information Professor Haworth endorsed the statement of the Oklahoma Inspector

> "That during the first three months of 1911, the entire Hogshooter area had a rock pressure decline of a pound a day on account of the excessive draft made upon it. See affidavit of Harry H. Breene, Vol. III, page 118."

And (p. 59) he says:

> "The affidavit of Harry Breene should be carefully considered."

As to the great Hogshooter field he says (p. 60):

> "It is my best judgment that with all the pipe lines drawing from the Hogshooter area during the present winter, and as they are sure to do in the future, unless something can be done to make them take better care of their wells and reduce the draught put upon them, this area cannot last at the

outside more than three more winters and probably little more than two more winters."

At page 73 and following he calls attention to the probable condition of corporate relation between the gas companies; in other words, the attempt of the gas companies to monopolize the fuel, having already pointed out on page 28 the method by which such monopolization may be used to injure the producer of gas.

This is made a little plainer on pages 79 and 80 where he says:

> "This is well illustrated in the report of the Collinsville area, Volume VI, page 375, where a number of wells with an original rock pressure of 540 pounds have been reduced to about 360 pounds without any gas whatever being drawn through the wells in question. This makes it so that an owner of a good gas well must sell his gas and have it delivered while his neighbors are delivering theirs or he will lose it entirely without compensation."

On page 76 he mentions the policy of restricting the use of gas to domestic purposes and gives it his endorsement.

If the matter is still dark and needs further illustration, such will be seen to be offered by the affidavit of the Oklahoma Pipe Line Inspector, Harry H. Breene, filed here (record, p. 16).

He says (record, p. 17) in speaking of the Copan field

"That the original rock pressure in this field was as high as 450 to 530 pounds. That the volume of the whole field at the present time does not exceed 100,000,000 cubic feet of gas per day, whereas a year ago with much fewer wells the volume was over 300,000,000 cubic feet per day. That at the present time there is only 125 wells in that field, whereas a year ago there was in the neighborhood of 60 wells or one-half that number."

And he says:

"But the rapid decline in this particular field has been on account of the large draw from these wells by the use of pumps or by allowing the wells to flow freely and by an utter disregard on the part of the pipe line companies, to a protective pressure on the wells. Each company vies with the others to see how much gas they can get from the fields. That if the wells are allowed to flow off at their potential capacity because of the presence of salt water they will be immediately destroyed by the salt water coming up through the rock and "drowning" the wells. If pumps are used, they will relieve the wells from the rock pressure by creating a vacuum and their effect is the same as allowing the well to flow at its potential capacity, except that the use of pumps is an exaggeration of the use of the wells flowing freely, in that friction will not allow the wells to flow quite as fast as they will flow where the pumps create a vacuum. For this reason it is necessary to preserve the protective pressure on the wells in order that they may last any length of time. The provision of the Kansas law prohibiting the use of more than fifty per cent of the potential capacity of the well is utterly inadequate to the circumstances of the case in Oklahoma and has proven to be entirely inadequate to the situation in Kansas.

That no exact figure can be named of what amount of potential capacity can be used, this depending upon the amount of salt water and the ease with which same will come out of the rock."

And he thinks that in the Hogshooter field that not more than fifteen per cent should be used. He shows that

"the pipe lines, principally the large eighteen inch interstate pipe lines, have operated in total disregard of section 11 of the act approved March 27, 1909, in that by the operation of pumping stations north of the Kansas line without any consideration being had for the size, capacity, pressure, facility and power of all other gas line corporations and gas consumers and gas producers in the same gas district which may be affected by the use of pumps, they have taxed the pumps to the utmost practical capacity with the consequent result of allowing a very large inflow of salt water into the wells and have not kept a protective pressure on the wells to keep out salt water."

Much more of the same kind, contained in that affidavit, we urge upon the court's consideration.

The situation is thus somewhat the reverse of that before the court in the case of Kansas vs. Colorado. In that case there was a flowing stream arising in Colorado and flowing through Kansas. Water was taken out of it to the great advantage of Colorado and it was not shown that the amount supplied to Kansas had been diminished, but it was distinctly held by this court that if it could be

shown that the amount to Kansas had been diminished that then a new bill might be filed by that state.

In this case, therefore, the fact that the use in Colorado should not be interfered with until the injury to Kansas was shown, justified the right of Oklahoma to seek to conserve gas, and if it appears, as it is alleged and substantially admitted in this case, that these pipe lines are taking more than their fair share from the common source of supply in Oklahoma, that also would justify an action on the part of the state of Oklahoma to the same degree as Kansas might be injured by excessive use of water.

The gas over which the controversy arose in this case is found in Oklahoma. It appears that there is not nearly enough to serve the people of the State of Oklahoma even for a short period. If one or the other had to suffer, that is the people of Oklahoma or the outside, it would appear that the original status of the gas being in Oklahoma that that state should have the first claim upon it, but the difficulty is not only that there is not enough for both, but the difficulty is also that Congress has adopted no legislation on the subject. In default of such the laws of the states should apply, while within the state, and this position was distinctly affirmed by this court in its former opinion where it was stated

> "There is no question in the case of the regulating power of the state of the natural gas within its borders; the appellees concede the power."

Because of the nature of gas, which is transported by gravity transportation and severance can be separated only in theory. By the very act of severance from the place of deposit transportation is begun, *and the state having the authority to legislate as to the severance, should, in the absence of Congressional legislation also have the authority to legislate as to the transportation.* The presence of pump stations across the Kansas line should not be allowed to interfere. While the State of Oklahoma cannot control the pumps located in Kansas, it should be allowed to control in Oklahoma the pipe lines in Oklahoma. The locating of a pumping station in Kansas necessarily and naturally affects the method of severance, and, by the use of a compressor pump at Grabham, take the pressure off the wells in Oklahoma to such an extent as unduly to deplete the source of common supply.

It appears in this answer, at least, as illustrated by Professor Haworth and Mr. Breene, that the only way to conserve, is to partially retain, and to this extent, preserve. As alleged in the answer, and as illustrated by Mr. Breene, to allow the well to flow freely is to destroy the common source of supply.

As bearing upon this fact is also this (p. 6, Record

in No. 916, last term): The Kansas Natural said in its bill:

> "Your orator further avers and declares that its said pipe line will be used by it wholly and solely for the transportation and carriage of natural gas from gas wells in the State of Oklahoma into the State of Kansas and not in any way for local traffic in the State of Oklahoma, and that your orator will conduct and carry on no local traffic in the State of Oklahoma, and that your orator will conduct and carry on no local traffic or business of any nature whatsoever within the State of Oklahoma."

That is, that it unalterably intends to *not* serve the people in Oklahoma *at all.*

The Regulative Statutes Whose Clear Purpose is to Prevent Distributive Waste of a Common Supply.

For the purpose of conserving the supply of natural gas in Oklahoma, and for the purpose of regulating its use, the legislature passed the act approved December 21st, 1907. We desire to call attention to Sections 5, 6 and 7 thereof on page 587 of the Session Laws of 1907-8:

> "Sec. 5. The laying, constructing, building and maintaining a gas pipe line or lines for the transportation or transmission of natural gas along, over, under, across or through the highways, roads, bridges, streets or alleys in this state, or of any county, city, municipal corporation or any other private or public premises within this state is here-

by declared an additional burden upon said highway, bridge, road, street or alley, and any other private, or public premises may only be done when right is granted by express charter from the state and shall not be constructed, maintained or operated until all damages to adjacent owners are ascertained and paid as provided by law.

"Sec. 6. All pipe lines for the transportation or transmission of natural gas in this state shall be laid under the direction and inspection of proper persons skilled in such business to be designated by the chief mining inspector for such duty, and the expenses of such inspection and supervision shall be borne and paid for by the parties laying and constructing such pipe lines for the transportation or transmission of natural gas.

"Sec. 7. No pipe line for the transportation or transmission of natural gas shall be subjected to a greater pressure than three hundred pounds to the square inch, except for the purpose of testing such lines, and gas pumps shall not be used on any gas pipe line for the transportation or transmission of natural gas on or in any gas well within this state."

Later on an act was passed that in part amends this, to-wit, the act approved March 27th, 1909. Particularly we call attention to Section 11 thereof:

"All domestic gas pipe line corporations in this state are hereby authorized to build and operate and for that purpose to acquire, whether by purchase or the exercise of eminent domain, sites for the erection of pumping stations in this state wherever the same may be necessary, due consideration being had for the size, capacity, pressure,

facilities and powers of all other gas line corporations and gas consumers and gas producers, in the same gas district which may be affected by the use of pumps."

The point is made by appellees that now that their lines are laid, that the desire of the state to supervise the laying is moot. But the point is that the present injunction prevents the state from supervising the laying of any future lines or the operation of the present lines.

The court on this point said (221 U. S. 262):

> "And, we repeat again, there is no question in the case of the regulating power of the state over the natural gas within its borders. The appellees conceded the power, and, replying to the argument of appellant based on the intention of appellee to erect large pumps to increase the natural rock pressure of the gas, appellees say, 'Kansas by legislative enactment forbids the use of artificial apparatus to increase the natural flow from gas wells: Chapter 312, Laws of Kansas, 1909, page 520. To this act the Kansas Natural Gas Company has no objection.'"

Clearly, therefore, the decree should be amended so as not to enjoin the enforcement of Section 6, and for the same reason not to enjoin the enforcement of Section 7, nor the enforcement of Section 11 of the Act of 1909. *These matters seem to be absolutely concluded by the statement of this court.*

The Decree Prevents Enforcement of the Laws in Restraint of Trade.

As well the decree of the lower court prevents the state from bringing an action against these companies on the ground that they are monopolizing the product with the intention of forcing the producer of gas to sell to them at their own terms, as pointed out by Professor Haworth at the places stated heretofore.

In this connection, the following statutes should also be considered:

The State of Oklahoma by Act approved June 10th, 1908, (page 750, *et seq.* of the Session Laws of 1907-8) passed an act against the establishment or maintenance of devices in restraint of trade or commerce, and Section 1 was to the following effect:

> "That every act, agreement, contract or combination in the form of trust, or otherwise, or conspiracy in restraint of trade or commerce within this state, which is against public policy, is hereby declared to be illegal."

In other words, an enactment of an anti-trust law, substantially the same as this court declared the Sherman Act to be in the Tobacco and Standard Oil cases. Section 13 thereof is a statutory enactment and application of the cases of Munn v. Illinois, 94 U. S. 113, and People v. Budd, 117 N. Y. 1, 143 U. S. 547:

"Sec. 13. Whenever any business, by reason of its nature, extent, or the existence of a virtual monopoly therein, is such that the public must use the same, or its services, or the consideration by it given or taken or offered, or the commodities bought or sold therein are offered or taken by purchase or sale in such a manner as to make it of public consequence, or to affect the community at large as to supply, demand or price or rate thereof, or said business is conducted in violation of the first section of this act, said business is a public business, and subject to be controlled by the state, by the corporation commission or by an action in any district court of the state, as to all of its practices, prices, rates and charges. And it is hereby declared to be the duty of any person, firm or corporation engaged in any public business to render its services and offer its commodities, or either, upon reasonable terms without discrimination and adequately to the needs of the public, considering the facilities of said business."

The Constitution of the state in Section 19 of Article IX had provided as to the Corporation Commission of the state:

" * * * The Commission may be vested with such additional powers, and charged with such other duties (not inconsistent with this Constitution) as may be prescribed by law, in connection with the visitation, regulation, or control of corporations, or with the prescribing and enforcing of rates and charges to be observed in the conduct of any business where the state has the right to prescribe the rates and charges in connection therewith, or with the assessment of the property of corporations, or the appraisement of their franchises, for taxation, or with the investigation of the subject of taxation generally."

In view of the constitutional provision, therefore, Section 13 clearly meant that wherever there was a business so wide-spread that the public had to use it, that it was subject to regulation as to the prices it paid and to the things that it did for the protection of the public; to regulation of the future, through the corporation commission; as to settlement of controversies of the past, through the courts. Prentis v. Atlantic Coast Line Co., 211 U. S. 210.

As this statute was passed June 10, 1908, before the handing down of the Prentis decision November 30, 1908, the distinction between judicial and administrative functions of the commission are not as clearly pointed out as if it were passed today, but sufficient is shown so that it will appear that under Sections 1 and 13 of the Act of June 10th, 1908, the Attorney General of the State, if not enjoined, could completely obliterate the oppressive practices of the Kansas Natural in draining the gas of their neighbors by the exhaustion of their own wells, and also prevent the use of natural gas by factories; because, as Section 13 of the Act of June 10, 1908, requires that a public business must offer its commodities without discrimination, that is, upon the same terms to all, whenever factories would have to pay the same price for natural gas as a private individual in domestic use, the large factory use of gas would at once disappear, because its cheapness would be gone.

It thus is too clear for argument, that if there is any basis whatever to the facts admitted in this case to be true, and set out in the answer of the Attorney General, and as illustrated by the Inspector of Gas Lines and Professor Haworth, of the Kansas University, the State of Onlahoma would be able to work not only its own redemption, but that of Kansas as well, if this injunction against its legal officer, preventing him from bringing a law-suit, were stricken out.

The Decree Prevents the Enforcement of the Laws Regulative of Corporations.

Suppose the Kansas Natural Company owns or controls by stock ownership, lease or otherwise the Marnet Mining Company, or its lines. This fact (and we have supposed a truth in order that our supposition may not be out of reason) would place the companies in violation of the laws of Oklahoma as to the consolidation of companies engaged in a competing business.

Section 8 of Article IX of the constitution provides:

> "No public service corporation, or the lessees, purchasers, or managers thereof, shall consolidate the stock, property, or franchises of such corporation with, or lease or purchase the works or franchises of *or in any way control,* any other public service corporation owning or having under its control a parallel or competing line; except by enactment of the legislature upon the recommendation of the corporation commission: * * *"

Both companies are public service corporations and drawing from and owning gas wells in the same pool, necessarily ought to be competitive. See Section 34 of Article IX of the Oklahoma Constitution:

> "* * * The term 'public service corporation' shall include all transportation and transmission companies, *all gas*, electric light, heat and power companies. * * *"

Likewise if there is a common control or ownership between the Kansas Natural and any other pipe lines, such for instance as the Oklahoma Natural Gas Company, or the Wichita Natural, or any other, the Attorney General ought not to be prevented from enforcing these laws by injunction against the further operation of all or any offending.

The Decree Prevents the Enforcement of the Tax Laws.

If we suppose (and in order that we need not suppose an unreasonable thing our supposition will be the truth) that the Kansas Natural operates the lines of the Marnet Mining Company under a lease which pays the mining company so small a return that its property for taxation has little "going concern" value—*as it does*—and pays the Kansas Natural so large a return as to inflate the value of its stock; now if, in addition, the Kansas Natural operated in Oklahoma no lines of its own but only operated those under the name of the Marnet Mining Com-

pany—*as it does*—the Kansas Natural might claim—*as it does*—that it has no taxable property in Oklahoma, and refuse to pay any taxes at all—*as it does.*

If such a case exists the only remedies would be by an action in the state courts or in this court.

It is idle to talk of an action in the lower court. The State of Oklahoma is not a citizen, and no federal law gives it a right of action for any of the matters in our various suppositions. Minnesota v. Northern Securities Co., 194 U. S. 48.

If we brought such actions in this court, an action against the Oklahoma Natural Gas Company as an Oklahoma citizen, would not be possible, and the danger would be that some citizen of Oklahoma might be a necessary party, and thus this court be without jurisdiction. (Minnesota v. Northern Securities Co., 184 U. S. 199). Or if that Scylla be passed, the Charybdis of enforcing our own laws in our own state would dispose of us. (Oklahoma ex rel v. Gulf, etc., 220 U. S. 288).

Taxation and the laws against combination and joint ownership do not directly burden commerce. The decree should be modified so at any rate to allow any suit except to enforce those provisions of Chapter 67 of the Session Laws of 1907-8, which the court holds bad.

The Meaning of the Former Opinion.

We now wish to advert to two questions as to the meaning of the opinion rendered. If it is contended that there is no doubt of the meaning and that what we need is a motion for a rehearing, then we may answer that our motion for a modification contained substantially the contentions; and if there is no doubt of the meaning, then, in effect, that motion is, in so far, an application for a rehearing made at the term and still undisposed of.

But we contend that the State of Oklahoma has no antipathy to foreign corporations as such, either gas or what else, and does not and did not mean to discriminate against them. We understand the unity of the whole country.

We insist that the opinion is to be read in the light of the other opinions of this court on cognate subjects, and that so read the policy of the state to conserve the gas for domestic use for all, can be carried out under a modification of the original decree.

In the light of the other cases we do not believe the court meant that the Kansas Natural could confiscate our highways or that while it wastes our common supply and refuses to supply our citizens, we may not refuse it the use of our highways.

Such a conclusion is not, we suggest, necessarily to be drawn from the language of the court.

While inaction by a state cannot invade constitutional rights, yet no corporation has a constitutional right to exercise eminent domain.

Further it would appear, that Section 5 of the Act of 1907-8 is not unconstitutional, because it is the common law of many states, and if the common law is not in derogation of the Constitution of the United States, it cannot be so simply because enacted by statute

> Western Union Tel. Co. v. Commercial Milling Co., 218 U. S. 406, particularly at page 417.

It has already been decided that the failure of the state to endow a foreign corporation seeking to do an interstate business within its borders with the power of eminent domain for that purpose, is not a violation of the Constitution.

> Western Union Co. v. Pennsylvania Co., 195 U. S. 594.

In that case it will be remembered that neither the laws of the United States nor of Pennsylvania granted to the Western Union the power of eminent domain, yet the telegraph company offered compensation to the Pennsylvania Railroad Company for the use of its public highway.

If the Western Union had been a foreign corporation of Pennsylvania, and the law of Pennsylvania had granted to domestic telegraph companies in that state the right of condemnation of public highways, would this condition have been held a justification of the seizure by the Western Union of the railway's highway upon payment of compensation?

We cannot believe from that decision, that the court in this case meant to hold that the Kansas Natural could seize the highways of Oklahoma without compensation to the state; or that the failure of the state to grant to the Kansas Natural the right to seize its highways, with or without compensation, takes away from the Kansas Natural a right which had been granted to it by the Constitution of the United States.

We take it that the meaning of the court only was, that in view of the fact that the State of Oklahoma granted to certain gas companies the use of its highways, that such use must also be extended to foreign corporations who performed the same services.

Is the Distinction Between the Gas Companies Who Within the State Serve And Who Do Not Serve People of the State, Who Obey the Regulative Laws of the State, and Who Disobey Those Laws, Purely Arbitrary?

Thus we reach the question of whether the Kansas Natural is performing the same service as those gas com-

panies, who, with a similar line serve the citizens of that state.

In the first place, we call attention to the fact that a gas company that has an eight inch line, takes less than half as much gas as one that has a sixteen inch line, and from the very difference in size alone there is a distinction which is not a discrimination.

And further, the Kansas Natural expressly states that it does not intend to serve the people of the State of Oklahoma at all.

The favor that the state shows a company engaged in a public business which serves the people of the state, and the failure of the state to extend that same favor to a public business which refuses to serve the state, would appear to be a distinction based upon a legal difference. Our understanding is that this matter was not discussed by the court in the former opinion. It is clearly stated (221 U. S. 262) that it is a discrimination to grant a greater use to domestic corporations than to foreign, but we take it the court did not mean that if there was a reason for the distinction that the same conclusion would follow.

In the recent case of Quong Wing v. Kirkendall, decided this term, January 22, 1912), it was recognized that a State might favor certain industries, and might have a

policy even if the court did not partake of that policy, and it was said:

> "It may make discriminations, if founded on distinctions that we cannot pronounce unreasonable and purely arbitrary."

And illustrations were pointed out.

If in the case of Kansas v. Colorado, 206 U. S. 46, a sufficient interest in the State of Kansas to maintain a suit was a supply of water to the people of that state, and if in the case of Georgia v. Tennessee Copper Company, 206, U. S. 230, the preservation of the forests of the state was of sufficient interest to justify the State of Georgia to enjoin the spread of noxious fumes, it would appear that the conservation of this fuel, ideal for domestic use, would be sufficient to justify the State of Oklahoma in seeking to conserve it, and in granting a privilege to a company that would adopt this policy, and refusing that assistance to one which rejected this policy.

An Appendix to this brief has been made of a note upon this case contained in the Central Law Journal of July 14th, 1911, at page 20. The writer does not draw from the opinion the conclusion we draw and seek to have the court adopt, but does state, perhaps, the consequence, so far as we see it, of refusing to adopt the meaning we urge.

The only point made by the companies seems a disingenuous stand in the shadow of the flag. They, engaged in destruction and the refusal even to pay taxes, seek to justify what they purloin by hiding it—in the place least meant for it—beneath the fold of the national emblem, and shed dry tears over the evil ways of Oklahoma.

Respectfully Submitted,

CHAS. WEST,
Attorney General.

APPENDIX.

(Taken from the *Central Law Journal* of July 14, 1911, Page 20.)

Notes of Important Decisions.

Interstate Commerce—The right of a state to control its highways.

Justice Holmes, Lurton and Hughes, dissent, without either filing any opinion, in the case of West v. Kansas Natual Gas Co., 31 Sup. Ct. 564. It seems a great pity that we are not advised of the grounds of their dissent for the concensus of the majority is shown in an opinion lamentably defective, as seems to us, in argument regarding a crucial feature.

The Oklahoma statute, having the purpose to prevent the conveying by pipe lines of natural gas, found in Oklahoma, out of the state, forbade the use of any highways of the state transversely or longitudinally by any pipe line of a foreign corporation transporting Oklahoma gas across its state line.

The charters of domestic corporations were required to provide that gas shall only be transported between points in the state, and foreign corporations formed for the purpose of transporting gas should not be licensed to do busi-

ness in the state at all. The statute provides that all pipe lines shall be laid under direction of inspectors, shall have a certain maximum pressure, and domestic companies may use the highways and have the right of eminent domain for passing on, over or under the surface of private property.

There is no disguise of the fact that the purpose of the statute is to keep all natural gas within the state under the plea that the state wishes to conserve its natural resources.

It is not disputed in this opinion that the state may legislate for such a purpose, nor that it may restrain the use of its highways so as to further such purpose, because its highways are its own. But the court, in denying the right of the state to prevent a foreign corporation, seeking to set at naught the state's policy in the conservation of its natural resources says: "The State, as we have seen, grants the use of highways to domestic corporations engaged in intrastate transportation of natural gas, giving to such corporations even the right to the longitudinal use of the highways. It denies to appellees the lesser right to pass under them or over them, notwithstanding it is conceded in the pleadings that the greater use given to domestic corporations is no obstruction to them. This discrimination is beyond the power of the state to make."

This statement seems very like the language of the bent on a certain conclusion looking for a peg to hang it on. The reference to a concession in the pleading looks like the finding of such a peg. We have always thought, however, that one is entitled, if he so elects, to the exclusive possession of his own land, whether another's presence thereon would be a benefit or a damage.

The distinction between domestic and foreign corporations is not a discrimination. To the former a concession is made in furtherance of a policy. The latter demands the same thing in order to violate that policy. It is as easy to say there is a discrimination in favor of purchasers for value against those who pay nothing.

The opinion represents the Circuit Court of Appeals as holding that: "No state can by action or inaction prevent, unreasonably burden, discriminate against or directly regulate interstate commerce, or the right to carry it on."

These are broad terms, but still they should hardly be deemed to embrace a prohibition against a state not making a grant in return for what it deems a good or valuable consideration and withholding that grant where the consideration is withheld from the grantor. When interstate commerce confiscates property for the benefit of an interstate trader it may be said to be "going some."

Supreme Court, U. S.
FILED.
FEB 23 1912
JAMES H. McKENNEY,
Clerk.

Supreme Court of the United States

OCTOBER TERM, 1911.

No. 914.

CHARLES N. HASKELL, CHARLES WEST, JOHN J. SHEA ET AL., Appellants,

vs.

THE KANSAS NATURAL GAS COMPANY, THE MARNET MINING COMPANY, and A. W. LEWIS.

Appeal from the Circuit Court of the United States for the Eastern District of Oklahoma.

BRIEF OF APPELLEES ON MOTION TO MODIFY THE DECREE.

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vs.

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Appeal from the Circuit Court of the United States for the Eastern District of Oklahoma.

Brief of Appellees on Motion to Modify Decree.

This brief is intended to show that:—

(a) This motion to amend is in reality and in truth a motion for a re-hearing or re-argument of the cause, and so the brief of the appellants (see page 33) seems to concede.

(b) The decree in the case is not inconsistent with or contradictory to the opinion of this court and needs no amendment to conform thereto.

(c) The Kansas Natural Gas Company and the Marnet Mining Company are neither of them producers of gas but purchasers. *Each of them*

purchases gas after it is produced. It should be emphasized that they do not produce it.

And yet this *motion* is really based on the right of Oklahoma to make reasonable regulations for the *production* of gas—which the pipe line companies do not deny—and which this Court said was not a question in this case.

The Motion to Modify.

The motion to modify the decree is made under authority of this Court that either party may apply to the Court below—

> "for a modification of the decree in so far as they may deem such modification required to secure conformity to the opinion of this Court."

The only power, then, the court below had was to so modify the decree as to make it conform to this Court's opinion.

Unless it is clear:

(a) That there is a necessity to modify the decree to make it conform to the opinions of this court;

AND

(b) That a real necessity exists for lawful action by the state in reference to the transportation of natural gas, which this decree prevents;

AND

(c) That the complainants under cover of the decree are doing things hurtful to the public, which the state can lawfully prevent and which the opinion of this Court allows;

this motion to modify the decree should be denied.

The Pipe Line Companies are not Producers of Gas.

It must not be forgotten that no one of the appellees maintaining and operating a pipe line is a producer of gas. Each buys the gas at the mouth of the well from the producer. It does not itself produce the gas or regulate its production or provide the methods and means by which the gas and the production of the same are regulated. It is simply a purchaser at the mouth of the well of the gas it transports.

If the producer is wasting gas or producing it contrary to lawful regulations of the State of Oklahoma, that is a question between the producer and the State of Oklahoma. It is not a question between the two pipe line companies here involved—the Kansas Natural Gas Company and the Marnet Mining Company—and the State of Oklahoma; but it is solely and only, so far as the production of the gas is concerned, a question between the producer and the state.

The opinion and decree in this case do not prevent the state of Oklahoma from enforcing all her conservation laws that are legal. They merely prevent Oklahoma from using a statute for the purpose of preventing

interstate commerce in gas, and this court has held that that was the reason and the purpose of the Oklahoma statute of 1907.

There can be no modification of the decree which would allow Oklahoma to drive the pipe line companies out of Oklahoma and, by indirect means, under cover of a pretended conservation of the natural gas, still prevent and burden interstate commerce in gas.

Oklahoma still avers that the purpose of the Act of 1907 *was to prevent waste.*

The State of Oklahoma still insists that the Act of 1907, Chapter 67, was an attempt to *prevent waste in natural gas.* On the original argument in this Court it stated that the controversy in the case was:

"conservation, not commerce;"

AND

"the due process clause is the single issue."

In this motion to amend it still so insists.

Note.—The full text of Chapter 67 is printed in the margin of the opinion in 221 U. S., 240-243).

Opinion of this Court.

This court said in its opinion (221 U. S., 239):

"The provisions of the statute *are not directed against waste.* They are directed against any use of the gas except in the state (251). * * * It does not protect the rights of all surface owners against the abuses of any. It does not alone regulate the right of the reduction to possession of the gas * * * (254)."

In that opinion declaring Chapter 67 unconstitutional, the Court stated the true purpose and scope of this statute as follows:

"A paradox is seemingly presented. Interstate commerce in natural gas is absolutely prevented—prohibited in effect, for we think it is undoubted that pipe lines are the only practical means of gas transportation, and to prohibit interstate commerce is more than to indirectly affect it. *Every provision of the statute is directed to such result* (249). * * * A state cannot exclude from its limits a corporation engaged in such commerce. To attain these unauthorized ends is the purpose of the Oklahoma statute. The state through the statute seeks in every way to accomplish these ends, and all the powers that a State is conceived to possess are exerted and all the limitations upon such powers are attempted to be circumvented (260). * * * We place our decision on the character and *purpose of the Oklahoma statute* (262)."

Notwithstanding this broad ruling, Oklahoma still insists that the statute is one against waste and for con-

servation of natural gas, and this is the *real* basis of the motion to amend the decree.

If the whole Oklahoma statute was (as this Court said it was, p. 260,) an attempt by Oklahoma to prohibit interstate commerce in natural gas, and sections 5, 6 and 7 were, as they are, parts of such legislation having such intent, *then* they fall within the condemnation of this Court.

As the amendment can only be to make the decree conform to the opinion of this Court and as the present motion to amend can only be maintained by *impeaching* and *reversing* the opinion of this Court, it follows inevitably that the motion to amend was properly overruled.

THE REAL CONTROVERSY IN THIS CASE IS BETWEEN THE LEGISLATION OF OKLAHOMA AND THE TWO PIPE LINE COMPANIES, TRANSPORTERS OF GAS, WHO ARE NOT PRODUCERS OF THE SAME; AND YET, AS WAS DONE ON THE ORIGINAL ARGUMENT, OKLAHOMA NOW INSISTS IN TREATING THIS CASE AS IF IT WERE BETWEEN THE STATE OF OKLAHOMA, ON THE ONE PART, AND THE PRODUCER OF GAS, ON THE OTHER PART, WHICH PRODUCER HAD DISREGARDED THE CONSERVATION LAWS OF THE STATE.

It is needless to say that there is no such issue here; and yet the brief in support of this Motion is very largely taken up with considering the issue as between the producer and the state and not as between the state

and interstate traders and transporters of natural gas.

This Court said in so many words, 221 U. S., 262:

"And, we repeat again, there is no question in the case of the regulating power of the State over the natural gas within its borders."

Final Decree.

Here are the words of the decree which this Court is asked to modify:

"The three cases pending herein, of Kansas Natural Gas Company, plaintiff, vs. Charles N. *Haskell, et al.*, defendants, No. 856; The Marnet Mining Company, plaintiff, vs. Charles N. Haskell *et al.*, defendants, No. 857; and A. W. Lewis, plaintiff, vs. Charles N. Haskell *et al.*, defendants, No. 858, having been heretofore by stipulation of parties and order of court, consolidated, and the same, and each of them, now coming on regularly for hearing and final decision and decree on the bills of complaint and the separate amended answers of defendant Charles West, and the stipulation of the parties hereto, and the motion of plaintiffs therefor, and all the parties appearing by their respective attorneys and the causes being submitted to the court on said pleadings and stipulation, and the court having duly considered the same and being fully advised in the premises doth find, order, adjudge and decree as follows:

1. Defendants, J. E. Love, J. J. McAlester, Pete Hanraty, A. P. Watson and John J. Shea, have filed herein disclaimers of any intent or purpose to do or perform any of the acts or undertake any

of the proceedings as charged against them and each of them in plaintiff's bills of complaint filed herein, and for that reason said bills of complaint, as to said defendants in this paragraph named are dismissed.

2. That the said motion of the plaintiff herein for a permanent and perpetual injunction against the several defendants herein is by the court sustained and granted.

3. The court doth find the issues and equities herein in favor of the plaintiff, and that the plaintiff is entitled to the relief prayed for in the bill of complaint herein; and doth find, adjudge and decree that chapter 67 of the Session Laws of the State of Oklahoma of 1907-8 passed and enacted by the Legislature of said State of Oklahoma, and approved by the Governor of said State on the 21st day of December, 1907, and referred to in plaintiff's bill of complaint herein, is unreasonable, unconstitutional, invalid and void and of no force or effect whatever.

4. The temporary injunction heretofore ordered and entered herein is hereby made permanent and perpetual, and the defendants and each and every of them, their representatives, agents, servants, attorneys, workmen and employees, and all other persons whomsoever, advised, inspired, influenced, incited or prompted by them, or either of them, are hereby forever restrained and enjoined from committing any of the acts complained of by complainant in its, or his, bill of complaint, and from tearing up or destroying, or in any way interfering with the laying, building, and construction of complainants' pipe lines, or any of the pipe lines referred to in the prayer of complainants' bill of

complaint, in, through or out of the State of Oklahoma, by reason of any of the terms or provisions or contents of Chapter 67 of the Session Laws of 1907-1908 passed and enacted by the Legislature of the State of Oklahoma, or by reason of any other claimed authority or statute of said state, or common law right, rule of action or unwritten law whatsoever; and from in any manner instituting, prosecuting, or conducting any suits, or suing out any writs of process in any of the state courts of the State of Oklahoma against the complainants, or any one representing it, or him, for the purpose of enjoining, restraining or interfering with either of them in the laying, building, construction, maintenance or operation of any gas pipe line either under the authority of said Legislative act contained in said Chapter 67 of the Session Laws of Oklahoma 1907-8 above referred to, or under any other law or statute of the State of Oklahoma, or under any common law right, rule of action, or unwritten law of the State of Oklahoma."

Meaning of the Decree—Opinion of the Court.

To ascertain the meaning of any decree the questions in controversy which are decided must be considered, and the general language of the decree is restricted to the circumstances of the particular case.

Thus the controversy in this case was whether the state of Oklahoma could enforce legislation of the state which forbade, and was passed for the purpose of forbidding, interstate commerce in natural gas. The Bill alleged that the purpose of the legislation of Oklahoma, approved by the Governor on the twenty-first day of December, 1907, was to prohibit and prevent interstate commerce in gas and to restrict the transportation and use of gas solely to the territorial limits of Oklahoma.

The Circuit Court held and decreed that such legislation was unconstitutional *because* it was in violation of the constitutional rights and privileges of the citizens of the different states, because it was a restriction and prohibition of interstate commerce, preventing citizens of states other than Oklahoma from buying from citizens of Oklahoma and transporting out of the state natural gas produced within the state of Oklahoma and sold by the owners thereof, citizens of Oklahoma, to the citizens of other states.

That court held that the purpose of the legislation approved December 21st, 1907, was to prohibit and prevent citizens of other states engaging in interstate commerce within the state of Oklahoma, in purchasing therein and removing therefrom natural gas.

When the case reached this court (the Supreme Court of the United States; see 221 U. S., 230), the Attorney General of Oklahoma stated that the—

> "ruling principle is conservation, not commerce; that the due process clause is the single issue (249)."

He insisted (221 U. S., 249) that the Act of 1907 was but the exercise of the police power to conserve the natural resources of the state and prevent the use of the highways of the state by pipe lines operated by foreign corporations, in order that gas may be transported only between points within the state. He admitted what this court found was undoubted:

> "that pipe lines are the only practical means of gas transportation;"

and that the two pipe line companies are not producers but transporters of gas.

The Attorney-General insisted that the manner in which this police power was sought to be exercised under the Act of 1907 was comparatively immaterial, because the purpose of it was to conserve for the people of the state their natural gas, and he asserted that for that purpose the state could use absolute power over the highways and prohibit foreign corporations from entering the state for that purpose.

This court said as to the purpose of this legislation of 1907 (251):

> "The provisions of the statute are not directed against waste. They are directed against any use of the gas except in the state."
>
> "*Every provision of the statute is directed to such result* (249)."

And you further declared that the statute of Oklahoma (254)—

> "does not protect the rights of all surface owners against the abuses of any. It does not alone regulate the right of the reduction to possession of the gas, but when the right is exercised, when the gas becomes property, takes from it the attributes of property, the right to dispose of it; indeed, selects its market to reserve it for future purchasers and use within the state on the ground that the welfare of the state will thereby be subserved."

You said, page 262:

> "And, we repeat again, there is no question in the case of the regulating power of the State over the natural gas within its borders."

The purpose of the conservation, then, of the gas by reason of this Act of 1907 is not to conserve it from waste or spoliation, but solely conserve it for the use of the people of Oklahoma.

This court found, after an extensive review of the authorities (260) that the statute of 1907 was void because:

(a) It violates the right of private property;
and
(b) It is a restraint upon interstate commerce.

You further replied to the contention of the Attorney General that a foreign corporation could not use the highways of the state without the state's permission, by laying thereon or across the same permanent structures, by saying that the state of Oklahoma grants the use of its highways to domestic corporations (262) en-

gaged in intrastate transportation of natural gas, and it denies such rights to those desiring to engage in interstate commerce, and that it could not do this.

It is one of the modes in which the st e exercised a plain power for an unlawful purpose, to wit, to prevent a citizen of the United States from lawfully transporting gas.

You concluded (262):

> "This discrimination is beyond the power of the state to make."

As said by the Circuit Court of Appeals in the Eighth Circuit, which language was quoted in the opinion of this court:

> "No state can by action or inaction prevent, unreasonably burden, discriminate against or directly regulate interstate commerce or the right to carry it on. And in all of these inhibited particulars the statute of Oklahoma offends (262)."

This Court in this case (221 U. S.) has already decided that the purpose of the legislation and the necessary effect of it was to deny to the citizen of the United States his right to engage in interstate commerce, and to take from the individual citizen his right to sell his gas for the purpose of the transportation of the same out of the state of Oklahoma. In other words, the real purpose and intent of this Act of 1907 was to prohibit interstate commerce in gas and prevent the removal of the gas from the state of Oklahoma.

As pointed out, the same result had been reached by the Eighth Circuit of the United States in the case

of *Haskell vs. Cowham,* 187 Fed., 404, which held that this Act of 1907 was unconstitutional because:

> "By its terms and by its necessary effect, prevents interstate commerce in the natural gas in that state, and discriminates against that commerce and in favor of commerce therein within the state." (410)

Action of the Court Below.

The court below said as follows (Rec., 25):

> "The court having heard oral argument both in support of and against the said motion to modify the decree, and without hearing or considering any evidence in support of or against the granting of said motion and without considering any affidavits or exhibits theretofore filed herein, took the matter under advisement, treating the plaintiff's pleadings as in the nature of a demurrer to said motion to modify the decree; it being stated by the court at the time, and understood by all parties, that no evidence would be considered by the court in determining the demurrer but that in case the demurrer was overruled the court would set a day for the hearing of evidence from both sides."

Assume (which I suppose we must) that this declaration of the court asserts that there were questions of fact in the case which were controverted, and upon which it declined to hear any evidence whatever; for it says that (26)—

> "no evidence would be considered by the court in determining the demurrer but that in case the demurrer was overruled the court would set a day for the hearing of evidence from both sides."

What those questions of fact were the court does not specify, but evidently whatever they were, they arose on the motion to amend.

The plaintiffs below at one and the same time filed in court two papers replying to the motion to amend:

(1) A paper to this effect (Rec. 8):

> "Now comes the complainants in the above entitled causes and file this their motion in the nature of a demurrer to the respondents' motion for a modification of the decree filed herein, and state that all the matters and things set forth in said motion for a modification of the decree have been passed upon and decided by the Supreme Court of the United States in an opinion handed down in said consolidated causes."

(2) An answer to be found on pages 9, 10, 11, 12, 13, 14 and 15 of the Record. This answer in detail replies to the entire motion.

The Court below filed no opinion but overruled the motion to modify the decree. It would seem, then, that

the court below said that the matters and things set up in the Motion had been passed upon by the Supreme Court in the opinion filed, and that it was not necessary to modify the decree.

THE MOTION WAS PROPERLY DENIED.

I.

Briefly and concisely stated, the defendant below in its Motion claimed that this court, in its opinion, excepted out of its denunciation of the Oklahoma legislation sections 5, 6 and 7 of Chapter 67 of the Act of 1907, and declared that the same were valid and in full force.

The complainant below said that this court had not excepted said sections out of its general condemnation of the Act of 1907, and that they were parts of a whole, by means of which Oklahoma sought unlawfully to prohibit interstate commerce in natural gas.

The court below agreed with the complainants.

(a) Section 5 practically prohibits the laying by the pipe lines companies of their pipe lines into and through the State of Oklahoma, which this court has already decided the complainants might do under the Commerce Clause of the Constitution. It denies the right to lay pipes across the highways unless the corporation agrees not to transport gas out of the state. To except Section 5 from the decree would be to modify not the decree alone, but the opinion of this Court.

(b) Section 6 puts our pipe lines absolutely under the unbridled control of a State Inspector,

who, without any state control or any standards set up as to the requirements of a pipe line, might (probably would) condemn and remove the same. To permit the State of Oklahoma under Section 6 to tear up our pipe lines because they were not laid under the direction of some inspector of the State of Oklahoma, when the facts are that the State of Oklahoma forbade the construction of the pipe line, would be in violation of the opinion of this court.

(c) Section 7 prohibits the use of pumps of any sort whether or not they be wasteful or injurious to the wells, and the intent of this is to render impossible transportation of gas outside the state. Section 7 restricts the transportation of gas in pipe lines to a pressure exceeding 300 pounds to the square inch. There is no proof whatever in this case that the complainants ever have or are violating that provision of the Act.

This whole motion is objectionable because it attempts to select certain sections of the Act of 1907, *i. e.*, sections 5, 6 and 7, and except those sections from the condemnation this court passed on the whole act, *i. e.*, its purpose to prevent interstate commerce.

The *real intent,* this court said—
the *real purpose,* this court said—
of Oklahoma in passing this legislation of 1907 was to burden and interfere with and prevent interstate commerce.

You said:

"Every provision of the statute is directed to such result (249)."

How, then, can it be necessary in order that the decree should conform to the opinion to take out of the decree and declare valid sections 5, 6 and 7?

These are parts of the whole.

The intent and effect of the decision of this Court in this case, we submit, is to hold the entire Chapter 67, including paragraphs 5, 6 and 7, wholly unconstitutional and void.

As Mr. Justice McKenna said, all the powers which the State of Oklahoma is conceived to possess are exerted in the hope of effectually preventing the entrance of the lines of the appellee gas companies into Oklahoma:

> Foreign corporations are denied, without qualification, the right to transport natural gas in pipe lines within the State (Par. 3).
>
> The business is restricted to corporations, *i. e.*, in effect, a franchise from the State is required (Par. 1).
>
> Such franchise or right can only be obtained upon condition of stipulating in the charter not to transport gas out of the State (Par. 2).
>
> The right to cross beneath highways is denied, except upon the same conditions (Par. 2, 5). Note that even paragraph 5, which appellants seek to save and enforce, contains this provision, declared by this court to be unconstitutional.

The right of eminent domain is denied except upon the same conditions (Par. 4).

The use of gas pumps of any character is prohibited and the pressure in the pipes is limited, in the hope that the natural gas pressure from the wells may not be sufficient to carry the gas out of the state, and the use of artificial pressure as a means of propelling the gas may be prevented (Par. 7). No distinction is made between suction pumps, which appellees have never used, and compressor pumps, which merely propel the gas forward.
The prohibition is that—
"gas pumps shall not be used on any gas pipe lines for the transportation or transmission of natural gas."

This provision is not directed against pumps which waste the gas or accelerate its flow beyond the rate caused by the natural rock pressure or exhaust or injure the wells in any other way. It is aimed against the *use of pumps as a means of transportation as such*. For if the use of pumps can be prohibited, transportation of natural gas out of the state can be made impossible and interstate commerce completely destroyed.

Pipe lines are required to be laid under the inspection of the state official, and the cost of this inspection must be borne by the company (Par. 6). But the nature of the tests to be applied and the cost thereof are left entirely to the arbitrary discretion of the official; no standard as to size or quality of pipe or depth or other requirement is fixed. The official might order pipes to be laid

50 feet below the surface, and so prevent construction. No remedies or specific penalties for the enforcement of these provisions are provided. No limit is placed upon the power of this official to obstruct foreign corporations, and thus furnish a practical method of exclusion.

Resort is made to each of these devices successively in the hope that if one fail on the ground of unconstitutionalty, another may prove effectual. All are parts of the one purpose, to prohibit interstate commerce in natural gas.

The only conceivable purpose which the Legislature of Oklahoma could have in applying these sections 5, 6 and 7 to a *foreign* corporation would be to raise additional obstructions to prevent it from engaging in interestate commerce within the limits of the state. Chapter 67 absolutely prohibits foreign corporations from either constructing a pipe line in Oklahoma or transporting natural gas out of the state. It would be nonsensical to speak of *bona fide* supervising and inspecting the laying of pipe lines, or prohibiting the use of pumps or limiting the pressure used therein by a corporation which is absolutely denied the right to enter the state. These provisions, if applicable to foreign corporations, are intended to be additional means to the policy of exclusion.

We submit that the only possible way to sever sections 5, 6 and 7 from the remaining provisions of Chapter 67 would be by treating them as applicable only to *domestic* corporations. But if this construction be adopted, then these provisions are not at all applicable to the appellees, and as against them the appellants can claim no right to enforce these provisions.

Appellants are reduced to this dilemma:

(a) If sections 5, 6 and 7 are applicable to foreign corporations, they are part of the main purpose found by this court to prevent foreign corporations from engaging in interstate commerce, and are unconstitutional.

(b) If these three sections are restricted in their application to domestic corporations, they are not applicable to the appellees, and as against the appellees no right to enforce them exists.

II.

The defendants below complained that the broad decree of the court restraining interference with the laying, building and construction of plaintiffs' pipe lines, should be so modified—

> "as to apply only to pipe lines which are laid constructed and maintained in accordance with the provisions of said Sections 5, 6 and 7 of said Chapter 67, and which in no way violate any of the provisions of said Sections 5, 6 and 7."

The complainants said that in the opinion of this court the whole of Chapter 67 was declared void; it was made up of all its parts and was passed to prevent interstate commerce in gas; as the state wholly denied the right of the complainants to lay any gas line and used force to prevent the same and refused to agree that under any circumstances the complainants could lay their gas line, that *therefore* the complainants could proceed under the circumstances of the case to lay their gas lines under the Commerce Clause of the Constitu-

tion as a necessary means of interstate commerce in gas, and that these provisions were an attempt of the state, by circuitous and devious provisions in the Act of 1907 to prevent the laying and the operation of the same, and were parts of the scheme and were therefore also unlawful and void.

> It was also called to the attention of the court that the State of Oklahoma forbade us altogether from laying the pipe line; and that as the pipe line was already laid and there were no averments that it was improperly laid, it was impossible to say that under the opinion of this court the state had a right now, under section 6 of Chapter 67 of the Act of 1907, to tear out the pipe line already laid because it was not laid under state inspection.

That there was no averment or proof that the pipe lines were carrying gas at a pressure exceeding three hundred pounds, and therefore there was no necessity at all, nor was it a proper modification of the decree, to inject into it what would seem to obscure instead of clarify it. That would in no degree make the decree conform to the opinion of the Court.

The court below agreed with the complainants.

III.

Under sections 3, 4 and 5, the Motion tried to raise the question that the decree should be modified to the extent that the provisions of Chapter 67 prohibiting the use of pumps should be recognized as legal, and the decree should be modified to that extent; that the use of pumps or other artificial means of transmission of gas when such pumps or means injured other corporations producing or consuming natural gas in the same district is forbidden by Chapter 67 as modified by the act of 1909; that Chapter 67 as modified by said act of March 27, 1909, prohibits the use of gas in such quantities as may affect other gas pipe line corporations, gas consumers and gas producers in the same gas district by reason of taking an undue quantity of gas or more than its proportionate share from the well, and that this was recognized by this court, and that therefore the decree should be modified by inserting a provision to that effect.

The complainants in the court below said that these three allegations are attempts to raise issues not legitimately in this case—

Because

(a) Neither of these pipe lines companies is a producer of gas. They buy gas at the wells from those who produce it, but neither of the pipe line companies itself produces gas.

(b) They buy and transport gas but they do not produce it.

(c) The compressing pumps employed by appellees are used only as a means of transportation. They do not accelerate the flow of gas beyond the natural rate of flow when the gas is allowed to escape from the well into the open air of its own inherent force or pressure. (This latter fact is admitted in appellants' brief, p. 15.) These pumps, therefore, do not increase the rate of flow and have no effect whatever upon it. Consequently the rate of flow is within the exclusive control of the producer who owns the well, and its regulation becomes a question between the producer and the state, with which appellees have nothing to do, and with which the decree in this case does not deal.

Why should these questions arising only between the producer and the State be injected into a decree which was entered in litigation between the interstate trader and transporter of gas and the State?

Therefore, these questions of producing, including the possible use by a *producer* of a *suction* pump to increase production and bring about the production of an undue quantity of gas, are questions between the State of Oklahoma and *the producer*, and are not questions between the State of Oklahoma and these pipe line companies; and therefore should not be legitimate causes for a modification of the decree. There was no proof in the case and there was no issue in the court below on the original hearing on the question whether the use of pumps by the pipe line companies in the transmission of gas outside of the State of Oklahoma did injuriously affect other corporations producing nat-

ural gas in the same gas district. There was no allegation in the motion that the complainant pipe line companies did so use pumps which, in the transmission of gas, produced injury to other corporations producing gas. Indeed, appellants in their brief (p. 15) now admit that the pumps used by complainants do not increase the rate of flow beyond the natural rate at which it escapes with the air.

Therefore to attempt to modify the decree as asked for under the third, fourth and fifth parts of the Motion would be an academic introduction into the decree of something that was not a matter of controversy in the case. It was not necessary in order to make the decree as entered conform to the opinion of the Court.

In addition, a comparison of Section 7 of Chapter 67 with the Act of March 29, 1909, shows a direct discrimination by the State of Oklahoma against interstate commerce.

Section 7 of Chapter 67 denies absolutely the right to use pumps without qualification or exception. The Act of 1909 expressly permits domestic corporations to use pumps. The result of this legislation is that it is unlawful for a foreign corporation, but lawful for a domestic corporation, to use pumps. Such discrimination is just as clearly a violation of the Federal Constitution as was the denial of the right to cross the highways to foreign corporations and the grant of such right to domestic corporations, which was condemned by this court upon the former appeal.

Moreover, even if domestic corporations were not allowed by the State of Oklahoma to use pumps, Section 7 of Chapter 67 would still be unconstitutional. The

compressing pump is an absolutely necessary instrumentality of interstate commerce, and the denial of the state of the right to use pumps to a foreign corporation is a direct prohibition of and discrimination against interstate commerce.

The Act of March 27, 1909, *does not apply to foreign corporations.*

Section 11 of this Act, to which appellants referred in paragraph 5 of their motion to modify, is as follows:

> "All DOMESTIC gas pipe line corporations in this state are hereby authorized to build and operate and for that purpose to acquire, whether by purchase or the exercise of eminent domain, sites for the erection of pumping stations in this state wherever the same may be necessary, due consideration being had for the size, capacity, pressure facilities and powers of all other gas line corporations and gas consumers and gas producers, in the same gas district which may be affected by the use of pumps."

It is apparent from the face of this Act that—

(a) This provision is expressly limited to domestic gas pipe line corporations and does not apply to foreign corporations.

(b) The purpose of this limitation is to grant the right to use pumps to domestic corporations while at the same time under Chapter 67, Laws of 1907-1908, denying it to foreign corporations.

(c) This statute does not regulate the amount of gas which all owners who draw from a common pool may take from their wells so as to provide for an equal division among them. The limitation upon the amount of gas which may be taken from the wells does not apply to the production of gas directly or generally, but is merely a limitation on the right granted by the statute to use pumps. The quantity of gas which an owner may take from his well is limited only if two conditions are present:

(1) The owner intends to sell his gas to a pipe line company. He may use it on his premises or sell it to a manufacturing corporation, and if he does this, he can take the entire daily flow of the well, as rapidly as the same would flow if allowed to escape into the open air.

(2) The pipe line company is going to transport the gas to a distance beyond the point to which the natural rock pressure of the gas will carry it, so that the use of pumps is necessary. If the pipe line company does not need to use pumps to reach its destination, the owner of the well may sell, and the pipe line company may receive, the entire daily production of the well as fast as the natural rock pressure will force the gas out.

IV.

Under the Sixth reason given in the Motion, it is stated that this court did not affirm that the interstate trader could confiscate the property by passing under the highway of the state without the consent of the state and against its will, and that therefore the decree which prevents suits for such usurpation of power should be modified.

The complainants answered that if there was any one thing in the opinion of this court which was broadly and unhesitatingly stated, it was that under the facts of the case these interstate traders had a right to lay and maintain their gas pipe line for the carrying of gas outside of the State of Oklahoma, and that the provisions of the Act of 1907, and all the acts of the defendants under any other law of the state, intending to deny to the interstate trader the right to engage in interstate trade in gas in Oklahoma, were void, and that the Commerce Clause, under the circumstances of this case, gave the right to the pipe line companies to lay their pipes.

The Court below agreed that the opinion of this court did so hold.

V.

The Seventh reason given for the Motion is:

> "The Supreme Court, in its opinion, does not hold that the defendants can be enjoined from bringing any suit under any other statute, common law right, rule of action or unwritten law whatsoever, and the decree herein, is in this respect inconsistent with the opinion of the Supreme Court."

The complainants answered this by saying that the decree in this case restrained the defendants from an unlawful interference with the rights of the pipe line companies as interstate traders; and that however the state of Oklahoma saw fit to prohibit interstate traders from coming into Oklahoma and transporting natural gas, whether it was by the specific legislation of 1907 (which was the legislation particularly involved) or by any other pretended rule or law created by the state of Oklahoma, the same was in conflict with the Commerce Clause of the Federal Constitution and therefore void, and the injunction simply meant that the state of Oklahoma could not under any pretense of a state law, prohibit and prevent the interstate trader from engaging in interstate trade in the purchase and transmission of gas through Oklahoma, and this whether it be by written or unwritten law. That the whole of the decree should be read together and such was its intent and meaning.

The Court below agreed with the complainants.

The language of the decree, which appellants contend is too broad, is explained by the declared purpose of the officials of the State of Oklahoma to invoke not only Chapter 67, but also other statutes and even the common law of that state, for the purpose of preventing appellees from constructing pipe lines within its territory.

This purpose was stated on page 39 of the brief filed by appellant on the former appeal in this case, as follows:

> "In no event should the appellant, the Attorney-General of the State, be enjoined from enforcing the other laws of the state, and the common law—for instance, the state's highway and nuisance laws—as against the appellees though such enforcement *may render impossible appellees' prosecution of its desires as to transportation of natural gas in Oklahoma* and the building by it of its pipe lines in or across the state highways."

Statute and common law of a state are equally invalid when applied for the purpose of interfering with rights guaranteed by the Federal Constitution and the attempted enforcement of each should be enjoined:

Western Union Telegraph Co. vs. Commercial Milling Co., 218 U. S., 404, 416, 417.

VI.

The Eighth reason for this modification of the decree is an argument to prove that Oklahoma ought to have the right to give to domestic corporations which serve the public in Oklahoma privileges which they refuse to interstate traders, and among those, to give to the domestic trader the right of way along its highways, and deny it to the interstate trader.

To this the complainants replied that certainly the decree needed no modification in that respect, because the opinion of this court was pronounced that the State of Oklahoma could not discriminate against the interstate trader as suggested in this reason and prevent the interstate trader from getting into Oklahoma or into the gas territory by prohibiting to him the use of the highways of the state.

The court below agreed with the complainants.

THE APPELLEES HAVE NEVER REFUSED TO FURNISH GAS TO CONSUMERS IN OKLAHOMA.

The Attorney General in his brief (pp. 3, 24, 36-37) charges that the Kansas Natural Gas Company refused to supply gas to consumers within the state.

Our answer is that the State of Oklahoma absolutely denies us the right so to do. Chapter 67 of the Session Laws of Oklahoma of 1907-1908—the identical statute which this court declared unconstitutional on the former appeal—absolutely and unreservedly prohibits a foreign corporation from transporting and selling natural gas within the State of Oklahoma.

Section 3 of that statute provides as follows:

> "Foreign corporations formed for the purpose of, or engaged in the business of transporting or transmitting natural gas by means of pipe lines, shall never be licensed or permitted to conduct such business within this state."

This prohibition was one of the illegal means resorted to by the Legislature to prevent interstate commerce in natural gas which were condemned by this court by its decision in this case.

It was in the light of this legislation, since declared unconstitutional by this court, that the averment

in the appellees' bill in equity, to which the Attorney General refers, was made. This averment is as follows:

> "Your orator further avers and declares that its said pipe line will be used by it wholly and solely for the transportation and carriage of natural gas from gas wells in the State of Oklahoma into the State of Kansas, and not in any way for local traffic in the State of Oklahoma, and that your orator will conduct and carry on no local traffic in the State of Oklahoma, and that your orator will conduct and carry on no local traffic or business of any nature whatsoever within the State of Oklahoma." (Original Record, p. 6.)

The purpose of the gas companies in making this averment was to assert their right to engage in interstate commerce as a privilege guaranteed to them by the Federal Constitution. Chapter 67 had prohibited appellees from engaging in the transportation of natural gas, whether interstate or intrastate, in Oklahoma. The state, it was believed, had no authority to prohibit interstate commerce, but subject to certain limitations, did have power to prevent a foreign corporation from doing local business. The gas companies in their bill for an injunction endeavored to separate the question of their undoubted right to engage in interstate transportation of natural gas from the question of their right to do local business, and this was done by the averment quoted above. The reason was not any unwillingness on their part to engage in local business and serve the people of Oklahoma, but was the hostile attitude of the State of Oklahoma compelling them to bring their business within the protection of the Commerce Clause of the Federal Constitution.

THE ANSWER OF THE DEFENDANTS TO COMPLAINANTS' BILL FOR AN INJUNCTION AND THE ATTEMPT TO INTRODUCE INTO THE CASE THE QUESTIONS OF THE WASTE OF NATURAL GAS AND THE UNSKILLFUL PRODUCTION OF THE SAME.

After the case had been originally heard in the court below on demurrer, Oklahoma, through its Attorney General, filed an amended answer, in which he averred that he believed that the speedy exhaustion of natural gas would occur in the State of Oklahoma. He set forth figures as to the production of the gas and the quantity thereof and the different fields of gas and different sands from which gas is produced. He averred on information that every well takes from the total quantity and diminishes the producing capacity of every other well, and that the effect of this legislation by the state was to preserve the natural gas field; that their coal was being rapidly reduced; that the transportation of gas from Oklahoma without regulation by the laws of Oklahoma be forbidden; that the effect of enormous pumping stations outside the State of Oklahoma would be to render useless all the present other lines in Oklahoma; and that if large pumps to pump out the wells, out of proportion to the rock pressure were used, they would be detrimental to other wells, etc., etc.

On these averments of fact the Attorney General of Oklahoma claimed that this legislation of 1907 was intended to prevent waste in the production and use of natural gas, and that the statute should be upheld because the State of Oklahoma had the undoubted right

to provide for the care and regulation of the production of natural gas within its borders.

OPINION OF THIS COURT.

As we have hereinbefore stated, this court could not see its way to construe the Oklahoma legislation as the Attorney General averred, and on the contrary it held (see citations hereinbefore) that the whole intent and purpose of this legislation of Oklahoma was to prohibit the transportation of gas out of the State of Oklahoma, and that it was therefore null and void.

The opinion of this Court said that the purpose of the legislation was not to prevent waste of gas, but to forbid its transportation beyond the state.

ANSWER OF THE APPELLEES TO THE MOTION TO MODIFY.

The appellees explain what their different pipe lines are (Record, 9, etc.).

They aver that they are not producers of gas, but purchase all the gas they get from different owners of the wells.

That the gas is delivered to them at the mouth of the wells, and that they have no charge or care concerning the production of it and take no part therein.

That when the gas is produced and delivered to the pipe lines they transport it to Kansas City, Missouri, and other places where it is used as fuel.

They aver that the pressure in the gas lines does not exceed 300 pounds to the square inch, and that this natural pressure of itself carries the gas through the pipe line across the state line of Oklahoma until it comes to a place about 13 miles north of the said state line and about 45 miles north of the actual gas fields. Here the pressure in the lines by friction has been reduced from 90 to 125 pounds. At Grabham Station there is a battery of compressing or forcing engines. They take the gas as it is run into an intake and then they force the gas from their intake northwardly, renewing a pressure by their engines of about 300 pounds, to another station called Petrolia, 48 miles north of the Grabham Station and 61 miles from the state line of Oklahoma.

Here again the gas enters the intake of the engines at Petrolia Station, a pressure of 300 pounds is given to the gas by the engines, and this carries the gas along the pipe lines northwardly again, until it comes to what is known as Scipio Station, which is about 48 miles north of Petrolia Station.

Here again the gas enters the intake and the engines force it with a pressure of about 300 pounds into the cities of Topeka, St. Joseph and Kansas City. It is not true, this Answer says, that these engines "pump out" the wells producing the gas which is transported out of Oklahoma:

"or that the said engines in any way increase the natural flow of the gas from the wells from which

it is being sold and delivered by the owners thereof into the pipe lines." (Rec. 11.)

The Answer avers that all the gas they buy:
"flows from the wells by the natural confined pressure of the gas therein, and not by means of any artificial pressure or suction or action whatsoever, applied either by the owners of the wells or by these complainants, or any of them." (Rec. 11.)

That they do not in any way increase the natural flow of the gas from the wells.

They aver that nowhere in Okahoma is there any gas well from which the flow of gas from it is forced or increased by artificial measures.

They further show that the so-called pumping or forcing stations on the pipe lines are absolutely necessary for the transportation of gas.

Unless such stations can be used to compress the gas and force it along, the transportation of gas in the United States will be very much limited and the business of the production and sale of gas will be very much interfered with.

They deny the averments of the state's original answer as to removing the rock pressure from the gas and say that that is not the case so far as they know, and that if it is done, it is the action of the producers and not themselves.

They allege that the compressing engines do not in any way increase or expedite the natural flow of gas from the wells, but that these stations are simply used

to compress the gas as it flows into them, and give it a new force and energy which it theretofore had not.

The Answer further avers that the pipe line companies have the right to buy any quantity of gas which is offered to them for sale by the owners thereof.

That they have the right to transport the same out of the State of Oklahoma.

They aver that these pipe lines are wholly used and necessary for interstate commerce in gas.

There can, therefore, be no possible reason why this decree, the whole effect of which is to prevent the State of Oklahoma from burdening interstate commerce, should be modified; for if it be true that the conservation of the production of gas in Oklahoma is the real desire of the state, that conservation is not interfered with by the decree.

This court has held that the statute of Oklahoma of 1907-1908, Chapter 67, and the acts of the officials representing Oklahoma showed an evident purpose and intent to prevent and prohibit in Oklahoma interstate commerce in gas; and that therefore that legislation and those acts attempted to be justified under state laws—whatever those laws might be—were illegal and unlawful and should be enjoined.

Such a decree does not prohibit the State of Oklahoma from taking such proper steps for the conservation of the production of gas as may, in its wisdom, be advisable, and it may do this without a modification of the present decree. It may not pretend to conserve the

production and transportation of natural gas and do so by burdening interstate commerce and prohibiting the transportation of that gas out of the state; but it may, as this court has said, in lawful ways regulate the production of the gas.

To induce this court to reverse the court below and modify the decree, as the Motion suggests, it should be apparent on the face of the record that there is a real necessity for it: that the decree interferes with and prevents the State of Oklahoma from enforcing some law truly passed and truly intended to conserve the production of natural gas: that the complainants in the Bill—these pipe line companies—are in some way interfering with that conservation and doing so unlawfully under color of the decree in this case; and that therefore the decree ought to be modified to enable the state to take proper steps to prevent these wrongs.

THEREFORE

the Motion should be supported by the averment and proof of facts that the complainants are doing unlawful things under color of this decree. These unlawful things should be specified. If averred and denied, they should be proven.

The attention of this court is called to the fact that nowhere in this Motion to modify the decree is it averred that the complainants are doing any specified

thing which actually interferes with any law of the State of Oklahoma in conserving or regulating the production and transportation of natural gas, except that they are transporting it out of the state.

THE LEGISLATION OF OKLAHOMA AS TO PUMPS IS UNCONSTITUTIONAL BECAUSE IT DISCRIMINATES AGAINST INTERSTATE COMMERCE.

Section 7 of Chapter 67 of the Laws of 1907-1908 provide that—

> "gas pumps shall not be used on any gas pipe lines for the transportation or transmission of natural gas."

This prohibits the use of pumps by all corporations, *including foreign corporations*, without any exception.

Section 11 of the Act of March 27, 1909, provided that—

> "All domestic gas pipe line corporations in this state are hereby authorized to build and operate and for that purpose to acquire, whether by purchase or the exercise of eminent domain, sites for the erection of pumping stations in this state wherever the same may be necesary, due consideration being had for the size, capacity, pressure, facilities and powers of all other gas line corporations and gas consumers and gas producers, in the same gas district which may be affected by the use of pumps."

In this latter provision is a plain and express grant to domestic corporations of the right to use pumps.

From a comparison of these two provisions, these conclusions necessarily follow:

(a) If Section 7 of Chapter 67 could be severed from the rest of this unconstitutional statute (which we deny) and enforced as against foreign corporations, foreign corporations would be absolutely and without restriction denied the right to use pumps which are the necessary instrumentalities of interstate commerce in natural gas.

(b) Domestic corporations are expressly permitted to use pumps.

Here is a discrimination against interstate commerce in respect to the right to use pumps, as bold and as direct as was the discrimination by denying the right to cross highways to foreign corporations and granting it to domestic corporations—which this court declared in violation of the Federal Constitution upon the former appeal. In its opinion Mr. Justice McKenna said (262):

"We place our decision on the character and purpose of the Oklahoma statute. The State, as we have seen, grants the use of the highways to domestic corporations engaged in intrastate transportation of natural gas, giving such corporations even the right to the longitudinal use of the highways. It denies to appellees the lesser right to pass under them or over them, notwithstanding it is conceded in the pleadings that the greater use given to domestic corporations is no obstruction to them. This discrimination is beyond the power

of the State to make. As said by the Circuit Court of Appeals in the Eighth Circuit, no State can by action or inaction prevent, unreasonably burden, discriminate against or directly regulate interstate commerce or the right to carry it on. And in all of these inhibited particulars the statute of Oklahoma offends."

The denial by Oklahoma of the right to use pumps is on all fours with its denial of the right to cross highways. The rule applied by this court in its decison in the former case must apply in this case.

Moreover the denial of the right to use pumps to a foreign corporation is more than discrimination; it is part of a scheme to make the transportation of gas out of the state impossible, and so prohibit interstate commerce.

It is only when the gas is about to be transported and that by a foreign corporation which can take it out of the state, that Oklahoma steps in and seeks to "conserve" the supply of gas by prohibiting the use of pumps which are absolutely necessary to the transportation of natural gas beyond the point to which the natural rock pressure of the well will carry it. We submit that the only intelligible purpose and the apparent purpose of the discrimination made by the statute is to place an embargo on the exportation of natural gas out of the state.

At present the natural pressure of the gas as it comes from the wells in the Hogshooter Field is sufficient to carry it for a distance of forty miles to the nearest pumping station on appellees' line, the Grab-

ham Station, located in the State of Kansas, thirteen miles north of the Oklahoma boundary line. Should the natural rock pressure of the gas diminish as the wells continue to be used, as has happened in every gas field, and become too low to carry the gas the distance of thirty-one miles to the Kansas State line, and the use of compressing pumps may be forbidden, the State of Oklahoma has as effectually prohibited interstate commerce in natural gas as if this court had not stricken down but had sustained the embargo sought to be created by Chapter 67. But the State of Oklahoma is not content with this. It complains of the existence and operation of our pumps outside its own limits at the Grabham Station in Kansas and argues that a modification of the decree is necessary to enable it to institute proceedings to prevent the alleged effect of these pumps, forty miles distant, upon the gas wells in Oklahoma. The pumps at this station are necessary to force the gas forward upon its way to the Kansas cities which are supplied by appellees. Here, again, if the State of Oklahoma could stop the operation of these pumps, it could absolutely cut off our exportation of gas to these Kansas cities. Transportation of commodities by railroad could not be more effectually or more completely destroyed if the State of Oklahoma were to forbid the use of locomotives.

THE AFFIDAVIT OF H. H. BREENE IS NOT PART OF THE RECORD IN THIS CASE.

The application by the State of Oklahoma to modify the decree was not made by petition setting forth the facts averred in the Breene affidavit, but was presented simply by motion in which no allegations of fact were made. This motion merely charged that certain portions of the decree were not within the scope of the opinion of this court, and gave no intimation of an intention to introduce new and additional facts in regard to the condition of the gas fields since the original answer of the State was filed.

This motion to modify was filed on July 19, 1911 (Rec., 4, 7). Notice was served by the Attorney-General upon counsel for complainants below, that the motion to modify would be argued on July 31, 1911. On that day complainants filed a motion to dismiss the motion to modify, and also filed an answer (Rec. 7). In view of the contention of the State of Oklahoma in the motion to modify that the opinion of the Supreme Court sustained its right to forbid the use of pumps, the appellees in their answer denied specifically and unequivocally that their pumps accelerated the flow of gas from the wells or injured the wells in any manner, and explained fully the nature and location of their compressing pumps, and prayed for opportunity to take testimony to prove the facts alleged. (This is now admitted by appellants in their brief, page 15.)

On the same day, but after the filing of the answer (Rec. 16), the appellants filed this *ex parte* affidavit of Breene. As we have said, none of the allegations of fact made in this affidavit in regard to the condition of the Oklahoma fields had been suggested in the motion to modify the decree, or alleged by petition, or presented to the court by any formal pleading, which would apprise appellees of the issue sought to be raised and would give them an opportunity to answer.

The Motion was then argued.

After argument the court rendered its decision, denying the Motion and entered an order as follows (Rec. pp. 25-26):

> "* * * the defendants herein having, on the 19th day of July, 1911, filed their motion to modify said final decree and filed affidavit in support thereof on July 31st, 1911, and the plaintiffs having filed their motion in the nature of a demurrer and their answer to said motion to modify, together with a motion to spread the mandate of the Supreme Court upon the records of this court, and the court having heard oral argument both in support of and against the said motion to modify the decree, and without hearing or considering any evidence in support of or against the granting of said motion and *without considering any affidavits* or exhibits thereto filed herein, took the matter under advisement, treating the plaintiffs' pleadings as in the nature of a demurrer to said motion to modify the decree; it being stated by the court at the time, and understood by all parties, that no evidence would be considered by the Court in determining the demurrer but that in case the demurrer was overruled the

Court would set a day for the hearing of evidence from both sides."

The Circuit Court here states in so many words that no proofs were taken. If this means anything, it means that the application was heard on the pleadings only—the motion to modify and appellees' answer—and as the facts averred in the affidavit of Breene had not been alleged in the motion to modify or incorporated in the pleadings in any other manner, they were not before the court, and were not taken into consideration by it in denying the motion.

There is nothing in this record to show that this affidavit was ever brought to the attention of the court.

The court expressly says that its final order was made—

"without considering any affidavits or exhibits thereto filed herein."

The transcript shows only an endorsement by the clerk on the affidavit—"Filed Jul-31, 1911" (Rec. 22).

The appellees in their answer had fully replied to all the averments of the motion to modify. Prior to the argument this Breene affidavit had not been placed on file or any notice given of the intention of the state to use it, and the appellees had no notice of its contents or of its existence, or any opportunity to answer it.

In addition, it is a settled rule of equity pleading that an *ex parte* affidavit does not become part of the record by merely being placed on file in the office of the clerk, but that an order of the court is required for that purpose.

II. Street on Federal Equity Practice, section 1300:

"Affidavits are not a part of the record proper, even though they are filed, unless made so by an order, entered on the minutes of the court, in the nature of a bill of exceptions."

An affidavit so filed is not part of the record upon appeal to this court:

Taylor on Jurisdiction and Procedure of the Supreme Court, Sec. 135-a, p. 228;
England vs. Gebhardt, 112 U. S., 502, 505;
Sargeant vs. State Bank of Indiana, 12 How., 371, 385.

THE NATURE AND EFFECT OF APPELLEES' PUMPS.

In this proceeding after repeatedly charging appellees with using "suction" pumps "to pump out the wells," the appellants in their brief filed on this argument, now admit that the pumps which appellees are employing do not increase the flow of gas from the well beyond the natural rate of flow when the cap is removed and the gas is allowed to escape from the pipe into the open air.

In the answer filed by the Attorney General to the original bill for an injunction, it was averred that—

> "plaintiffs may outside the State of Oklahoma erect enormous pumping stations which they are actually in the process of constructing * * *
>
> "When *gas is removed* by the limited, prudent and *natural rock pressure*, the nature and formation of the gas and oil sand is not radically changed, but if large pumps *to pump out the wells* out of proportion to the rock pressure are used, as are now actually threatened by the plaintiffs, the gas and oil sand is actually broken down as though shot with dynamite."
>
> (Record on former appeal, p. 109).

The plain meaning and intent of this language is to contrast two different situations—

(a) The flow of the gas when it is removed by the "natural rock pressure;"

(b) The flow of the gas when "large pumps to pump out the wells out of proportion to the rock pressure are used."

The words "to pump out" naturally suggested that some external force was applied which caused the gas to flow more rapidly than it would as the result of the natural rock pressure.

In the motion to advance the case on the former appeal at the October Term, 1910, the state complains specifically of the—

> "enormous SUCTION pumps, such as appellees threatened to install and now actually are using immediately north of the state line in Kansas."

This last charge as to the "enormous suction pumps" was again repeated verbatim on page 5 of the motion to advance the present appeal at this term.

In contrast with these averments, the following pregnant admission appears on page 15 of the appellants' brief on this appeal:

> "Because a suction pump cannot do more than produce the atmospheric pressure of sixteen pounds to the square inch a suction pump can have no further influence on a well than could a compressor pump, and both the compressor pump and the suction pump can produce *no greater effect than would be brought about by simply taking off the cap from the well and allowing the gas to come out as fast as it will.*"

In other words, the State of Oklahoma now admits, that even when appellees' pumps are in operation, the flow of the gas is no more rapid than when the cap is removed from the pipe in the well and the gas is allowed to escape of its own force. The *natural* flow of the gas is obviously the rate at which the gas flows by virtue of its own inherent force or pressure

caused by reason of its being confined in the rock and without the application of any external or foreign force. Our compressors, appellees now admit, do not increase or disturb this natural rate of flow.

As a matter of fact, the gas does not enter our mains at nearly so rapid a rate of flow as it would escape into the open air. The reason is that our trunk lines into which the gas passes are already packed with the gas for the distance of forty miles from the Hogshooter Field to the nearest pumping station, and its further flow is impeded by the gas so confined in the mains and by the friction in passing through the pipes.

Appellees apparently admit—and this is the fact—that even if the appellees operated compressing pumps of the character now used by them at the mouth of the wells, the rate of flow would not by reason thereof be any more rapid than that at which it escapes into the air when the cap is removed. Our first pumping station, however, is distant forty miles from the Hogshooter Field.

The gas at the mouth of the well has a natural rock pressure of from 340 to 510 pounds per square inch. The owner of the well confines the gas by means of a "gate," which checks and regulates the flow so that he delivers the gas into the pipe lines at a pressure of 300 pounds. In transmission the pressure of the gas diminishes from 300 pounds, at which the owner of the well has delivered it from the pipe in his well, to from 90 to 125 pounds at the nearest pumping station (Rec. 10).

Our pumps at the latter station cause no suction and do not tend to create a vacuum, but assume merely for the sake of argument that they did. The pressure caused by the creation of a vacuum would only

be equivalent to the pressure of the atmosphere—fourteen pounds to the square inch; and the effect upon the gas wells from the addition of fourteen pounds pressure at a point forty miles distant from the wells to gas that has already lost several hundred pounds of pressure in transmission, obviously enough would be negligible.

Inasmuch as pumps used by the appellees do not increase the rate of flow of gas, the regulation of such rate of flow is wholly a question between the state and the owners of the well, and is not affected by the decree.

Even when compressing pumps are in operation, appellants now admit, the rate of flow is no greater than when the cap is removed from the well and the gas is allowed to escape into the air. If this be so, then the only method of limiting or decreasing the rate of flow is by prohibiting the well owner from taking the full daily capacity of his well. For example, the State of Kansas prohibits the owner from taking more than fifty per cent. of the daily capacity of his well (See *infra.*, p. 59).

Does the State of Oklahoma prohibit the owners of wells generally from taking the entire natural flow of gas from their wells? Absolutely not. The owner may sell the entire flow up to the full daily capacity of his well or may pipe it to a factory or other place of consumption and there consume it. So long as the gas is used for commercial or industrial purposes within the state and is not transported to such a distance as to require the use of pumps, no limitation of the amount of gas to be taken is imposed upon the well owner.

The owner is not either expressly or by implication denied the right to consume the entire flow of

his well, neither is he forbidden to sell his entire flow to a pipe line company. The only provision is directed against the pipe line company: it may not use pumps —pumps which, it is now admitted, do not accelerate the natural flow.

The fact that compressing pumps do not increase the natural flow of gas or injure the wells has been judicially recognized by the Supreme Court of Indiana.

The Supreme Court of the United States has on several occasions approved and followed the decisions of this important gas-producing state, upon the power of the state to regulate the production of natural gas —in its opinion on the former appeal in this case and in the case of *Ohio Oil Company vs. Indiana*, 177 U. S., 190.

Richmond Natural Gas Company vs. Enterprise Natural Gas Company, 31 Ind. App., 222, 232-234 (1903):

> The Indiana Statute provided that natural gas—
>
> "shall not be transported through pipes at a pressure exceeding 300 pounds per square inch, nor otherwise than by the natural pressure of the gas flowing from the wells."

The lower court enjoined the appellant from using pumps on its pipe line to transport the gas a distance of 38 miles to a city which it supplied.

The court found as a fact that the operation of the pumps did not increase the flow of the gas beyond the natural rate of flow at which it would issue from the mouth of the well into the open air, but did cause the gas to flow from the well more rapidly than it would if it passed into a pipe line 38 miles long and

was retarded by friction and other causes which were not counteracted by the use of pumps.

The Court of Appeals held that the use of pumps under these circumstances was lawful and reversed the injunction decree, saying in its opinion:

> "The sole question here is whether the special findings show that the use of the pumps and *compressors* will work such injury to appellees, by increasing the flow of gas from the wells, as entitles them to injunctive relief. It is a property of gas, that, while easily compressed, it is always ready to expand and occupy more space. This expansive force or tension imparted to it by some pressure brings it through the wells to the surface and into pipes or other receptacles. The quantity of gas that this expansive force or tension, overcoming the atmospheric pressure, will bring to the surface, and into the pipes or receptacles, is the natural flow of the wells. The natural import of the term 'natural flow,' as used in the statute, necessarily means the *entire volume of gas that will issue from the mouth of a well when retarded only by the atmospheric pressure.* If certain wells will bring into a receptacle at the surface 1,000,000 feet of gas per day, that is their natural flow. Suppose a valve in this receptacle permits one-half this volume to pass into pipes to consumers. Opening an additional valve, and permitting one-half the balance to pass from the receptacle to other consumers, does not increase the natural flow, in the sense in which the term is used in this statute. With the additional valve a greater portion of the natural output of the wells is taken, but the natural flow of the wells has not been increased. And, as illustrated in appel-

lant's brief, suppose pumps are attached to a well naturally producing 1,000 barrels of water per day, for the purpose of forcing 500 barrels daily to a higher altitude, in order that it may be utilized. Although the water flowed from the well into a main to which the pumps were attached, and the total output put under control, it could not be claimed that the natural flow of the well had been increased by the use of the pumps in carrying half the natural flow to a place for convenient distribution.

"It must be conceded that appellant has the right to use all the gas that naturally comes through its wells to the surface of the ground. When we speak of this as 'the natural flow of the wells,' we necessarily mean the total output of the wells from natural causes. The term 'natural flow,' as used in the statute, can be given no other reasonable meaning. An artesian well from which flows 1,000 barrels of water daily has a natural flow of 1,000 barrels daily. And so it is with gas-wells. Increasing this natural flow of gas or this total output of the wells from natural causes is the thing that is prohibited, and so long as the appliances take less than this natural flow, as thus understood, it can not be said that they have increased the natural flow. Upon the facts found all the gas that goes into the pumps on the intake side goes in by reason of its own expansive force or tension. This expansive force or tension must necessarily exist so long as back-pressure is maintained at the pumps. The court finds that this back-pressure was to be maintained at all times by appellant in the operation of its pumps and compressors, and that at no time has it been or is it appellant's intention to permit the

entire natural flow from its wells to be taken by the pumps. Unless the pumps were so operated as entirely to remove this back-pressure and create suction in the wells, it could not be said that they would increase the natural flow or natural output of the wells. From the facts found the only effect of the use of the pumps is to decrease the force of this back-pressure, but this the statute does not prohibit.

"It is true that through the use of the pumps a greater portion of the natural flow or total natural output of the wells will be taken than would be taken without their use, and that the back-pressure in the wells will be correspondingly decreased. But the statute does not require that only a certain portion of the gas coming naturally from a well can be used, and that a certain portion shall be held back. Nor does the statute require that a certain amount of back-pressure, or that any back-pressure, shall be maintained. It can not be denied that appellant might lawfully dispose of the total product of its wells to consumers near the wells, and the total natural flow be consumed by them, without maintaining any back-pressure in the wells.

"We find nothing in this statute which requires us to say that, although the 100,000 feet of gas produced naturally by A's well is A's property, and a like amount so produced by B's well in the same vicinity is B's property, *that A may use this total output in his factory at the mouth of his well, and B must be denied the use of the output of his well in his factory ten miles distant, because the natural pressure is insufficient to carry it that distance.*"

This decision was approved by the Supreme Court of Indiana in the case of—

Consumers' Gas Trust Co. vs. American Plate Glass Co., 162 Ind., 393, 398, in which the court said:

> "The mere fact that the complainant disclosed that the gas company was using a pumping station in the winter time, at a point some six miles from the land in question, for the purpose of overcoming the friction incident to the flow of gas through many miles of pipe, does not stamp such company as a law-breaker. There is nothing to suggest that by means of such pumping station *the natural pressure of the gas at the wells was increased*, or that the pressure in the pipe exceeded three hundred pounds per square inch. See *Richmond Nat. Gas Co. vs. Enterprise Nat. Gas Co.*, 31 Ind. App. 222."

In *Manufacturers' Gas & Oil Co. vs. Indiana Natural Gas & Oil Co.*, 155 Ind. 461, 50 L. R. A. 768, 772, the right of the well owner was defined as follows—

> "Natural gas in the ground is so far the subject of property rights in the owners of the superincumbent lands, that while each of them has the right to bore or mine for it on his own land, and *to use such portion of it as, when left to the natural laws of flowage, may rise in the wells of such owner and into his pipes*, no one of the owners of such lands has the right, without the consent of all the other owners, to induce an unnatural flow into or through his own wells, or to do any act with reference to the common reservoir, and the body of gas therein, injurious to, or calculated to destroy, it."

To the same effect, see:

Manufacturers' Gas & Oil Company vs. Indiana Natural Gas & Oil Company, 156 Ind. 679.

COMPARISON OF LAWS OF OKLAHOMA AND KANSAS.

PROVISIONS AS TO PUMPS.

Oklahoma.

Chap. 67, Sec. 7, *Session Laws of* 1907-8, page 586::

"Gas pumps shall not be used on any gas pipe lines for the transportation or transmission of natural gas or used on or in any gas well within this State."

Chap. 26, Sec. 11, Session Laws of 1909, page 435:

"All domestic gas pipe line corporations in this State are hereby authorized to build and operate, and for that purpose to acquire, whether by purchase or the exercise of eminent domain, sites for the erection of pumping stations in this State wherever the same may be necessary, due consideration being had for the size, capacity, pressure, facilities and powers of all other gas pipe line corporations and gas consumers and gas producers, in the same gas district, which may be affected by the use of said pumps."

Kansas.

Chap. 312, *Laws of* 1905, page 520:

"It is hereby declared to be unlawful for any person or persons, firm, company or corporation to use any device for pumping, or any other artificial process or appliance *that shall have the effect of increasing the natural flow of natural gas out of any well.*"

The Oklahoma provisions do not specify what is the character of the pumps prohibited, whether merely suction pumps which increase the flow of the gas from the well and which appellees do not use, or also compressors, frequently but inaccurately called "pumps," which merely receive the gas from the pipe line and propel it forward, and do not accellerate the flow of gas from the well or injure the well in any manner. But whatever the scope of these provisions this conclusion is inevitable: Domestic corporations are expressly authorized by the act of 1909 to erect pumps, and that, too, in the very heart of the gas fields, but foreign corporations are denied by Chapter 67 of the Session Laws of 1907-1908 the right to maintain pumps anywhere and regardless of their effect upon the wells.

Chapter 67 of the Session Laws of 1907-1908, including Section 7, was declared unconstitutional by this court upon the former appeal. Section 2 of the Act of March 22, 1909 (Chapter 26, Session Laws of 1909, p. 32), is in terms limited to:

"*domestic* gas pipe line corporations in this state."

It follows, therefore, that there is to-day no law on the statute books of the State of Oklahoma regulating the use of pumps by foreign corporations engaged in interstate commerce, and this appeal, in so far as it asks relief as to pumps, presents merely a moot question.

LIMITATION OF FLOW OF WELL.

Oklahoma.

Chap. 26, Sec. 11, *Session Laws of* 1909, page 435:

"All domestic gas pipe line corporations in this State are hereby authorized to build and operate and for that purpose to acquire, whether by purchase or the exercise of eminent domain, sites for the erection of pumping stations in this State wherever the same may be necessary, due consideration being had for the size, capacity, pressure, facilities and powers of all other gas pipe line corporations and gas consumers and gas producers, in the same gas district, which may be affected by the use of said pumps."

Kansas.

Chap. 313, Sec. 6, *Laws of* 1905, page 523:

"If gas shall be taken from any well at a rate such as to consume more than fifty per cent. of its daily production, it shall be deemed a waste within the meaning of this clause to the extent of such excess. If any owner of any such well or pipe line, or any agent or servant of such owner in charge and control of such well or pipe line, shall for more than two days after the service of the notice last aforesaid fail to stop the leakage or waste by this clause prohibited, such owner, agent or servant shall be guilty of a misdemeanor, and on conviction thereof shall be fined a sum of not less than twenty-five dollars nor more than five hundred dollars for each offense, and each day that such failure continues after the expiration of the said period of two days shall constitute a separate offense."

This Oklahoma statute does not regulate the amount of gas to be taken from wells generally, but is in terms only a limitation upon the right to erect pumps. It prescribes no definite or practical standard to fix the amount of gas or the proportionate flow which may be taken. It leaves it wholly to the discretion of the State official to determine in each particular instance what is—

> "due consideration * * * for the size, capacity, pressure, facilities and powers of all other gas pipe line corporations and gas consumers and gas producers, in the same gas district, which may be affected by the use of said pumps."

Contrast with this vague, indefinite and unenforcible statute, the language of the Kansas law. The latter prohibits under extreme penalties the taking of more than fifty per cent. of the daily flow of the wells. This regulation fixes a definite limit which affects all owners of wells alike and leaves nothing to the discretion of the official. *Here is a conservation law which conserves.*

The same pumps from which the Kansas Natural Gas Company receives gas from the Oklahoma fields, also receive gas from the South Independent Field and the North Independence Field in Montgomery County, Kansas, and these pumps located in Kansas are operated in compliance with the laws of that state (Sec. 10).

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SUPREME COURT, U. S.
FILED.
JAN 15 1912
JAMES H. McKENNEY,
CLERK.

IN THE

Supreme Court of the United States

No. 914 OCTOBER TERM, 1911.

CHARLES N. HASKELL, et al., Appellants,

vs.

THE KANSAS NATURAL GAS COMPANY, et al., Appellees.

ANSWER TO MOTION TO ADVANCE.

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IN THE

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No. **OCTOBER TERM, 1911.**

CHARLES N. HASKELL, et al., Appellants,

vs.

THE KANSAS NATURAL GAS COMPANY, et al., Appellees.

Answer of Appellees.

Appellees oppose this motion to advance because:

(1) There is no emergency requiring such action. *No new facts* are introduced by the Attorney General which were not before the court below and this court on the original hearing and argument in the Circuit Court and in this court.

(2) The brief of the Attorney General filed in this court on the present motion to advance is in large degree a recital of the averments in his briefs filed in this court on the previous motion to modify the decree and also on the previous motion to advance the case for hearing, which allegations were fully answered by the complainants in their reply briefs on both said motions.

(3) All the questions sought now to be raised on the present appeal have already been passed upon and adjudicated by this court.

(4) The pipe line companies are not using and never have used suction pumps which increase the flow of gas from the wells in Oklahoma. The first pumping station they have is thirteen miles from the state line of Oklahoma and is located in Kansas, and it merely receives the gas that flows into it from the original pressure as it left the wells in Oklahoma, and then, by new force applied to the gas, projects it further on its route to the cities of Kansas. This new pressure does not react in any way or increase the flow of the wells.

If this be true, as the answer of the pipe line companies in the court below to this motion successfully shows, then there is no urgency whatever which requires an advance in this court to consider any other respects in which the Attorney General moved to modify the decree of this court, because not only are the modifications asked in such motion inconsistent with the previous decree of this court, but there is no emergency which requires their adoption.

Argument.

The sole question which will be presented on the final argument of this second appeal in this case will be whether the language of the decree from which the original appeal was taken is broader than is justified by the opinion of this court affirming the same. The decree in this case was affirmed by this court on May 15th, 1911, by an order as follows:

> "It is now here ordered, adjudged, and decreed by this Court that the decree of the said Circuit

Court in this cause be, and the same is hereby affirmed with costs; and that the said complainants recover against the said Charles West, Attorney General of the State of Oklahoma for their costs herein expended and have execution therefor."

West, Attorney General, vs. Kansas Natural Gas Company, 221 U. S., 229.

Immediately after this decision an application was made by the Attorney General of Oklahoma to this court to modify the decree of the Circuit Court which had been affirmed. By its order of May 29th, 1911, this court declined to make any modifications in the decree of the Circuit Court, and made the following order:

"It is now here ordered by the Court that either party be at liberty to apply to the Court below for a modification of the decree in so far as they may deem such modification required to secure conformity to the opinion of this Court."

Upon the return of the mandate to the Circuit Court a motion was made by the Attorney General on July 19, 1911, asking that court to modify its decree. On the 31st day of July the appellees filed a motion to dismiss the motion to modify, stating that all the matters set forth in the motion to modify had been decided by the Supreme Court; and on the same day also filed an answer denying specifically that they were using, or intended to use, suction pumps along any of their pipe lines either in Oklahoma or in Kansas and explaining the nature and effect of the compressing pumps employed by them and setting forth at length the conditions under which their lines were operated.

The motion to modify presented by the Attorney General did not aver as a fact that the defendants in

error were using suction pumps along its lines, or aver any facts to show that the compression pumps used by the defendants in error in Kansas had an injurious effect on the wells in Oklahoma or were threatening to do any other act which would waste the supply of gas or interfere with the rights of other owners of gas wells, and offered no proof or evidence in support of any such contentions.

There are no new facts introduced in the court below to sustain the motion of the Attorney General to modify or to show an emergency which requires immediate action by the court.

The motion to modify its decree was denied by the Circuit Court and from its order this appeal is taken.

Neither in its motion in the Circuit Court nor in this application to advance do the appellants submit any proposed form of decree or suggest any form of modification desired, with sufficient exactness, so that appellees can adequately present their objections to the same. We do, however, gather from these motions that the appellants desire the decree of the Circuit Court modified so as to permit them to do the following:

(a) Institute proceedings under the laws of Oklahoma to restrain the appellees from operating pumps located in Kansas for transportation of natural gas, the nearest one being about 13 miles north of the Oklahoma-Kansas boundary line.

(b) Institute proceedings in the Courts of Oklahoma to enforce Sections 5, 6 and 7 of Chapter 67 of the Session Laws of Oklahoma of 1907 and 1908.

Section 5 prohibits the laying of pipe lines across highways, unless permission to do so is granted by an express charter of the state in which the corporation agrees not to transport gas beyond the limits of Oklahoma. Section 6 provides generally that pipe lines be laid under the supervision of state officials, but does not fix any standards as to size or strength of pipe or depth of line or other requirements. Section 7 arbitrarily limits the pressure in pipe lines to 300 pounds, irrespective of the strength of the pipe, and prohibits the use of pumps without distinguishing between suction and compressing pumps.

THE PRESENT SITUATION.

Under the protection of the injunction granted by the Circuit Court appellees have built pipe lines from Kansas into Oklahoma and their system of lines is now completed. Their right to construct such lines upon a private right of way purchased by them and to cross the highways of a state where necessary, without procuring any franchise or consent from the State of Oklahoma, has been sustained by this court on the former appeal finally and without reservation. Appellants do not charge that the appellees' pipe lines are laid improperly or unlawfully, and if they are not so laid, the State of Oklahoma cannot now insist that they take up their lines and lay them over again under the supervision of its officials. This being the status of this case, requirements of Oklahoma as to supervision, etc., present only moot questions,—certainly the facts do not show the existence of an emergency demanding immediate judicial relief necessary to support a motion to advance.

The only specific act of which the State of Oklahoma complains is the alleged use of pumps in Kansas.

APPELLANTS DO NOT AVER ANY FACTS SHOWING ANY INJURIOUS OR UNLAWFUL USE OF PUMPS BY APPELLEES, AND THE RECORD DOES NOT JUSTIFY ANY MODIFICATION IN THE DECREE TO PERMIT THE ATTORNEY GENERAL TO INTERFERE WITH THEIR USE OF PUMPS.

The only charges made by the State of Oklahoma in regard to pumps are those set forth in its Answer to the bill for an injunction, as follows:

> "That because plaintiff may outside the state of Oklahoma erect enormous pumping stations which they are now actually in the process of constructing, they might reasonably and would inevitably render entirely useless all the present lines in Oklahoma, and take away from the towns and cities of Oklahoma the entire practical use of their sole and natural fuel, because when gas is removed by the limited, prudent and natural rock pressure the nature and formation of the gas and oil sand is not radically changed; but if large pumps to pump out the wells out of proportion to the rock pressure are used, as are now actually threatened by the plaintiff, the gas and oil sand is actually broken down as though shot with dynamite or other violence, and the salt water thereunder, aways to be found, at once drowns out the wells, where rock pressure has been too greatly or rapidly decreased." (Record on former appeal, p. 109).

No other charge or averment appears in the record in this case, though statements as to such pumps are

made in the briefs under the motions to advance which have been filed in this court.

In our argument on the former appeal we called attention to the fact that the averment quoted above was argumentative merely, and that the alleged injurious effect of large pumping stations outside of Oklahoma was averred as possible merely, and not as a fact, and was therefore not before the Circuit Court as a fact upon the final hearing on bill and answer.

When the State of Oklahoma filed its motion to modify the final decree after the decision of this court, the appellees filed their Answer in the second paragraph of which they set forth as to these pumps, the following:

> "The present highest confined pressure of the gas in the wells in the said Hogshooter Field varies from 340 pounds to 510 pounds to the square inch, but the gas is not turned into the said pipe lines at over 300 pounds, which pressure forces and carries the gas through the said pipe line northwardly across the said State line and beyond the same until by the friction on the line and the lost energy in carrying or forcing the gas along, such initial pressure spends itself and is reduced to 90 to 125 pounds to the square inch, at what is known as the Grabham Station, a battery of compressing or forcing engines situate about 13 miles north of the said State line, and about 44 miles north of the southern terminus of the said pipe lines in the Hogshooter Field. * * * This Grabham Station consists of a battery of forcing or compressing engines into the intake of which the gas from the Hogshooter field goes at a pressure of from 90 to 125 pounds, from the Vanderpool Field at a pressure

of about 16 pounds, from the south Independent Field in Montgomery County, Kansas, at a pressure of from 50 to 85 pounds, and from the north Independence Field in the said County at a pressure of from 40 to 60 pounds. The forcing or compressing engines in the said Grabham Station by the aid of power produced from gas engines driven by internal combustion, force the gas on its way north compressing the same and increasing the confined pressure at the outlet of the said forcing or compressing engines to about 300 pounds, which again forces and carries the gas along the said pipe line system northwardly until by the friction on the line and the lost energy in carrying or forcing the gas along, such pressure at the outlet of the said forcing or compressing engines gradually spends itself and is reduced to a pressure varying from 90 to 125 pounds at what is known as the Petrolia Station, a battery of forcing or compressing engines situate about 48 miles north of the Grabham Station. This gas enters the intake of the said engines of the Petrolia Station at a pressure varying from 90 to 125 pounds, and these engines by the aid of power generated by a battery of internal combustion gas engines forces the gas still further on its way north again compressing the same and again increasing the confined pressure at the outlet of the said engines to about 300 pounds, which forces and carries the gas along the said pipe line system northwardly until by the friction on the line and the lost energy in carrying or forcing the gas along, such pressure at the outlet of the said engines again gradually spends itself and is again reduced to a pressure varying from 90 to 125 pounds at what is known as the

Scipio Station, a third battery of forcing or compressing engines situate about 48 miles north of Petrolia Station. The gas enters the intake of the forcing engines at the Scipio Station at a pressure varying from 90 to 125 pounds, and these engines by the aid of power generated by a battery of internal combustion gas engines, force the gas still further on its way north again compressing the same and again increasing the confined pressure to 300 pounds, which forces and carries the gas northwardly to the Cities of Topeka, St. Joseph, and Kansas City and intermediate cities, the points of consumption. These forcing or compressing engines are the 'pumps' erroneously called such and so referred to by the defendants in the above entitled cases. These answering complainants deny and say it is not true that these engines 'pump out' the wells producing the gas which the Kansas Company is transporting out of Oklahoma, or that the said engines in any way increase the natural flow of the gas from the wells from which it is being sold and delivered by the owners thereof into the pipe lines of The Marnet Company (now operated by the Kansas Company). They aver and state the fact to be that all the gas delivered by the owners thereof into the pipe lines owned by the Marnet Company and operated by the Kansas Company, flows from the wells by the natural confined pressure of the gas therein, and not by means of any artificial pressure or suction or action whatsoever, applied either by the owners of the wells or by these complainants, or any of them, either through the operation of their said lines or their said compressor stations, or in any other way, by which such natural flow

and pressure of the gas in the said wells is stimulated or increased. They further charge that there is not today in the State of Oklahoma a single gas well from which the flow of gas is 'pumped out' forced out or in any way increased or stimulated by artificial means. They further aver and declare that the said compressor or forcing stations are absolutely necessary integral and component parts of the pipe line system aforesaid, as much so as the pipe lines themselves, and that without the use of the said stations the said system could not be operated, and without them gas in practical quantities could never be piped to the Cities of Kansas City, St. Joseph or Topeka and intermediate points. They further aver that the pipe line systems transporting gas from West Virginia to the Cities of Pittsburgh, Pennsylvania, Cleveland, Cincinnati, Columbus, Akron and Toledo, Ohio, and from Pennsylvania to the Cities of Ashtabula and Conneaut, Ohio, and Jamestown, New York, as well as all other gas transporting systems in the United States and Canada are operated with similar compressor stations and without them such lines would be worthless and useless, and would wholly fail to supply the said cities with gas. They further say that the use of such compressor stations is the usual, customary and universal method of forcing and propelling the gas along and through the pipe lines to the places of consumption thereof. They say also that the gas pipe lines running from the Collinsville Field, about 15 miles south of the Hogshooter Field, to Oklahoma City and Guthrie cannot be successfully operated this coming winter without the use of a similar compressing station, and that the Oklahoma Natural Gas Company, the

owner of the said pipe line is now *with the knowledge, consent and approval of the respondents in the above entitled suits*, building and constructing such a compressor or forcing station about 40 miles southwest of the northeast terminus of its pipe line in the said Collinsville Field. They further say that the gas which the Kansas Natural is now transporting through the lines of The Marnet Company, now operated by it, is substantially all produced from wells in a pure gas sand and not from a sand or rock producing both oil and gas, and that the production of such gas even from the sands or rocks in which both oil and gas is found, and even in the quantities in which the same is produced, sold and delivered by the owners thereof into the pipe lines of The Marnet Company, now operated by the Kansas Company, does not and will not cause the said sands, rocks or strata to disintegrate or be in any way injured."

These are the facts upon which appellees rely to explain and justify their use of *compressing* engines or pumps, and to support their objection to any modification of the decree which would enable the State of Oklahoma to interfere with their use of such engines or pumps in the legitimate manner described in their Answer.

The Attorney General in his Answer to the original bill for an injunction made no averment to show the nature or danger of appellees' pumps except the argumentative conclusion quoted above (p. 6), nor in the motion of the appellants in the Circuit Court to modify the decree, after the decision of this Court, did they, though they complained of pumps, aver as a fact that appellees were using, or intended to use, ***suction***

pumps on any of their lines either in Oklahoma or in Kansas; or aver any facts to show that the compressing engines or pumps employed by appellees in Kansas had any injurious effect upon the gas wells in Oklahoma forty miles distant. The appellants did not put in issue any of the averments quoted above from the appellees' Answer.

The question of our right to use these compressing pumps in Kansas is of tremendous importance both to the gas companies and to the public. These compressors are as essential to transportation of gas by pipe line as are locomotives to transportation by railroad. Without the aid of such compressors, transportation of natural gas beyond the point where the natural rock pressure from the well ceases to carry the gas in practicable quantities is absolutely impossible; without the use of these compressors in Kansas, appellees could not transport the gas from the Oklahoma field to its Kansas market, appellees' investment of $600,000.00 in building pipe lines into Oklahoma would be utterly worthless, and large cities in Kansas would be wholly deprived of their supply of fuel.

THE INJUNCTION IN THIS CASE DOES NOT RESTRAIN OKLAHOMA FROM TAKING PROCEEDINGS TO PREVENT ANY ALLEGED INJURIOUS USE OF PUMPS IN KANSAS.

While the decree enjoins the Attorney General of Oklahoma from enforcing certain laws of Oklahoma, yet as a matter of fact, the Attorney General could not *under any statute or law of his state* maintain a proceeding to enjoin the appellees from operating pumps *in the State of Kansas.*

No statute passed by the State of Oklohoma could have any extra-territorial effect or prohibit the location and operation of pumps in Kansas. The statute or laws of Oklahoma which the Attorney General is enjoined from enforcing, would not cover such an act in Kansas and the possibility of such an act in Kansas is wholly irrelevant to the question of this decree, and the remedy of the State of Oklahoma against such an act is not given by the laws of Oklahoma and is not affected in any respect by the language of the injunction restraining the enforcement of any laws of Oklahoma.

If pumps should be erected in the future in the State of Kansas and should threaten by suction to exhaust the gas from the wells in Oklahoma, the State of Oklahoma has in the Federal Courts, when the case may arise, an adequate remedy.

Georgia vs. Tennessee Copper Co., 206 U. S., 230.

But such remedy would not be given by the laws of Oklahoma, the enforcement of which is enjoined by the decree, but would be afforded by the law governing the rights between states, the principles of "interstate common law" recognized by this court in *Kansas vs. Colorado*, 206 U. S. 46, 98.

Indeed, no laws of the State of Oklahoma are cited by appellants, except Chapter 67 of the Session Laws of 1907-1908 and the Act of March 22, 1909, which prohibit the use of pumps. Chapter 67 of the Session Laws of 1907-1908, including Section 7, as is more fully explained hereafter, was declared unconstitutional by this court upon the former writ of error. Section II of the Act of March 22, 1909 (Article 2, Chapter 26, Session Laws of 1909) quoted in appellant's brief, on the former appeal, page 32, is in terms limited to—

"*domestic* gas pipe line corporations in this state."

Appellees are foreign corporations engaged in interstate commerce.

There is no provision in either of these statutes limiting the quantity of gas which can be taken by the owner from his well and delivered to the pipe line companies.

Furthermore, appellees' compressing pumps in Kansas are regulated by and comply with Chapter 312, Laws of Kansas, 1909, page 520, which forbids the use of artificial apparatus to increase the natural flow of gas from the wells. The same pumps which receive gas from Oklahoma, also receive gas from two Kansas fields (*supra*, pp. 7-8).

SECTIONS 5, 6 AND 7, OF CHAPTER 67, WHICH APPELLANTS ASK TO BE EXCEPTED FROM THE DECREE, WERE DECLARED UNCONSTITUTIONAL BY THIS COURT UPON THE FORMER APPEAL.

(These sections are quoted at length in the motion to advance, and in the report of the former decision in 221 U. S., 240-241).

Appellants ask that the decree be modified so that they be allowed to enforce paragraphs 5, 6 and 7 of chapter 67 of the Session Laws of Oklahoma of 1907-1908.

This contention is wholly without merit. These paragraphs are part of the same vicious scheme to prohibit interstate commerce which this Court has condemned. They were added merely to give a semblance of police regulation to this statute, just as the title and conclusion of chapter 67 bear the stamp "police legislation."

This court, in its opinion declaring chapter 67 unconstitutional, stated the true purpose and scope of this statute as follows:

> "A paradox is seemingly presented. Interstate commerce in natural gas is absolutely prevented—prohibited in effect, for we think it is undoubted that pipe lines are the only practical means of gas transportation, and to prohibit interstate commerce is more than to indirectly affect it. ***Every provision of the statute is directed to such***

result. (8) * * * A state cannot exclude from its limits a corporation engaged in such commerce. To attain these unauthorized ends is the purpose of the Oklahoma statute. The state through the statute seeks in every way to accom plish these ends, and all the powers that a State is conceived to possess are exerted and all the limitations upon such powers are attempted to be circumvented. (15) * * * We place our decision on the character and *purpose of the Oklahoma statute.* (17)."

This construction by this court brings Chapter 67 clearly within the well-known principle that where the parts which embody the main purpose are unconstitutional or all the parts are designed to accomplish the same forbidden purpose, the entire statute is unconstitutional.

Scott vs. Donald, 165 U. S., 105.

Brown, J.:

"It is entirely well settled that the unconstitutionality of a particular provision will not invalidate an entire statute, unless such provision *embodies the main purpose of the statute.*"

Cooley on Constitutional Limitations (7th Ed.), pp. 247, 248, states this principle thus:

"Where, however, a part of a statute is unconstitutional, the fact does not authorize the courts to declare the remainder invalid also, unless all the provisions are connected in subject matter, depending on each other, *operating together for the same purpose.* * * * But if its purpose

> is to accomplish a single purpose only, and some of its provisions are void, the whole must fail unless sufficient remains to effect the object without the aid of the invalid portion."

The intent and effect of the decision of this Court in this case, we submit, is to hold the entire Chapter 67, including paragraphs 5, 6 and 7, wholly unconstitutional and void.

The only conceivable purpose which the Legislature of Oklahoma could have in applying these paragraphs 5, 6 and 7 to a *foreign* corporation would be to raise additional obstructions to prevent it from engaging in interstate commerce within the limits of the state. Chapter 67 absolutely prohibits foreign corporations from either constructing a pipe line in Oklahoma or transporting natural gas out of the state. It would be nonsensical to speak of *bona fide* supervising and inspecting the laying of pipe lines, or prohibiting the use of pumps or limiting the pressure used therein, by a corporation which is absolutely denied the right to enter the state. These provisions, if applicable to foreign corporations, are intended to be additional means to the policy of exclusion.

As Mr. Justice McKenna said, all the powers which the State of Oklahoma is conceived to possess are exerted in the hope of effectually preventing the entrance of the lines of the appellee gas companies into Oklahoma:

> Foreign corporations are denied, without qualification, the right to transport natural gas in pipe lines within the State (Par. 3).

The business is restricted to corporations, i. e., in effect, a franchise from the State is required (Par. 1).

Such franchise or right can only be obtained upon condition of stipulating in the charter not to transport gas out of the State (Par. 2).

The right to cross beneath highways is denied, except upon the same conditions (Par. 2, 5). Note that even paragraph 5, which appellants seek to save and enforce, contains this provision declared by this court to be unconstitutional.

The right of eminent domain is denied except upon the same conditions (Par. 4).

The use of gas pumps of any character is prohibited and the pressure in the pipes is limited, in the hope that the natural gas pressure from the wells may not be sufficient to carry the gas out of the state, and the use of artificial pressure as a means of propelling the gas may be prevented (Par. 7). No distinction is made between suction pumps, which appellees have never used, and compressor pumps, which merely propel the gas forward.

Pipe lines are required to be laid under the inspection of the state official, and the cost of this inspection must be borne by the company (Par. 6). But the nature of the tests to be applied and the cost thereof are left entirely to the arbitrary discretion of the official; no standard as to size or quality of pipe or depth or other requirement is fixed. The official might order pipes to be laid 50 feet below the surface, and so prevent construction. No remedies or specific penalties for the enforcement of these provisions are provided. No limit is placed upon the power of this official to

obstruct foreign corporations, and thus furnish a practical method of exclusion.

Resort is made to each of these devices successively in the hope that if one fail on the ground of unconstitutionality, another may prove effectual. All are parts of the one purpose to prohibit interstate commerce in natural gas.

We submit that the only possible way to sever paragraphs 5, 6 and 7 from the remaining provisions of Chapter 67 would be by treating them as applicable only to *domestic* corporations. But if this construction be adopted, then these provisions are not at all applicable to the appellees and as against them the appellants can claim no right to enforce these provisions.

Appellants are reduced to this dilemma:

(a) If paragraphs 5, 6 and 7 are applicable to foreign corporations, they are part of the main purpose found by this court, to prevent foreign corporations from engaging in interstate commerce, and are unconstitutional.

(b) If these three paragraphs are restricted in their application to domestic corporations, they are not applicable to the appellees, and as against the appellees no right to enforce them exists.

The language of the decree which appellant contends is too broad, is explained by the declared purpose of the officials of the State of Oklahoma to invoke not only Chapter 67, but also other statutes and even the common law of that state, for the purpose of pre-

venting appellees from constructing pipe lines within its territory.

This purpose was stated on page 39 of the brief filed by appellant on the former appeal in this case, as follows:

> "In no event should the appellant, the Attorney-General of the State, be enjoined from enforcing the other laws of the state, and the common law—for instance, the state's highway and nuisance laws—as against the appellees though such enforcement may render impossible appellees prosecution of its desires as to transportation of natural gas in Oklahoma and the building by it of its pipe lines in or across the state highways."

Statute and common law of a state are equally invalid when applied for the purpose of interfering with rights guaranteed by the federal constitution and the attempted enforcement of each should be enjoined.

Western Union Telegraph Co. vs. Commercial Milling Co., 218 U. S., 404, 416, 417.

JOHN G. JOHNSON,
D. T. WATSON,
Attorneys for Appellees.

The Report on the Oklahoma Gas Fields.

Since the foregoing Answer was prepared, we have received for the first time a copy of the "Report of Natural Gas Conditions in the Mid-Continental Gas Field, submitted to the Public Utilities Commission of Kansas City, Missouri," by Erasmus Haworth, which appellants have attached as Exhibit "A" to their Motion to Advance.

The state of Oklahoma in its motion to modify the decree in the Circuit Court did not allege any of the matters set up in this report or aver any new facts bearing upon the conditions of the gas fields in Oklahoma, or offer any proof in support of such contentions. This report was not offered in evidence or referred to in the hearings in the Court below. We have therefore had no opportunity to reply to its allegations.

We submit that this report is not properly before this court and should not be considered on this motion to advance, because not only is it not part of the record but no attempt was made to prove it or make it part of the record in the court below.

JOHN G. JOHNSON,
D. T. WATSON,
Attorneys for Appellees.

HASKELL *v.* KANSAS NATURAL GAS COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF OKLAHOMA.

No. 914. Submitted February 23, 1912.—Decided April 1, 1912.

Natural gas after severance from the soil being a commodity which may be dealt in like other products of the earth and a legitimate subject of interstate commerce, no State can prohibit its being transported in interstate commerce beyond the lines of the State, and the act of Oklahoma attempting so to do is an unconstitutional interference with interstate commerce as held in this case, 221 U. S. 229.

A State may by proper legislation regulate the removal from the earth of natural gas by the owner thereof, but may not discriminate against corporations doing an interstate business by denying them the right to cross highways of the State while domestic corporations engaged in the same business are permitted to use the highways.

Regulations in a state statute which may be valid as to individuals and domestic corporations engaged in business wholly within the State are not applicable to corporations engaged in doing the same business in interstate commerce when the statute expressly forbids such commerce; this court will not therefore direct that regulations of that nature become applicable to the latter class of such corporations because the prohibition has been declared unconstitutional as an interference with interstate commerce.

A decree of this court must be read in view of the issues made and the relief sought and granted; and a decree declaring a state statute unconstitutional so far as it prohibits, or is a burden upon, interstate commerce will not be construed as preventing the enforcement of such legislation as is legitimately within the police power of the State and not in conflict with the Federal Constitution.

172 Fed. Rep. 545, affirmed.

THE facts, which involve the construction of the decree entered in this case and reported in 221 U. S. 229, are stated in the opinion.

Mr. Charles West, Attorney General of the State of Oklahoma, for appellants.

Mr. E. L. Scarritt, *Mr. John J. Jones*, *Mr. John G. Johnson* and *Mr. D. T. Watson*, for appellees.

MR. JUSTICE DAY delivered the opinion of the court.

The appellees in this case brought suit in the Circuit Court of the United States for the Eastern District of Oklahoma against the appellants, who were the Governor, Attorney General, Deputy Attorney General, County Attorney and Deputy County Attorney of Washington County, Corporation Commissioners and Mine Inspector, of the State of Oklahoma, to enjoin the enforcement of certain statutes of the State of Oklahoma which undertook to prevent the complainants, now appellees, from transporting natural gas in interstate commerce beyond the borders of the State of Oklahoma. Upon final hearing in that court such statutes were held void, as against the Constitution of the United States, and the enforcement thereof was enjoined. The case came to this court on appeal, and was argued and decided at the October Term, 1911, being reported in 221 U. S. 229.

On May 29, 1911, the last day of the term, a motion was made in this court by the Attorney General of Oklahoma to modify the affirmance of the decree in the court below. The parts objected to are found in the margin.[1]

[1] 3. The court doth find the issues and equities herein in favor of the plaintiff, and that the plaintiff is entitled to the relief prayed for in the bill of complaint herein; and doth find, adjudge and decree that chapter 67 of the Session Laws of the State of Oklahoma of 1907–8, passed and enacted by the Legislature of said State of Oklahoma, and approved by the Governor of said State on the twenty-first day of December, 1907, and referred to in plaintiff's bill of complaint herein, is unreasonable, unconstitutional, invalid and void and of no force or effect whatever.

This motion was overruled, with leave to either party to apply to the Circuit Court from whence the case came for such modification of the decree as would make it conform to the opinion of this court. Thereafter, the present proceeding was instituted by the Attorney General's filing a motion in the Circuit Court of the United States for the Eastern District of Oklahoma for the modification of such decree. The former complainants, defendants in this proceeding, appeared and filed a motion in the nature of a demurrer and also filed an answer in the case. The Circuit Court, treating the pleadings of the defendants as in the nature of a demurrer, without hearing evidence in support of or against the granting of the motion, and without considering the affidavits or exhibits filed, over-

4. The temporary injunction heretofore ordered and entered herein is hereby made permanent and perpetual, and the defendants and each and every of them, their representatives, agents, servants, attorneys, workmen, and employés, and all other persons whomsoever, advised, inspired, influenced, incited or prompted by them, or either of them, are hereby forever restrained and enjoined from committing any of the acts complained of by complainant in its, or his, bill of complaint, and from tearing up or destroying, or in any way interfering with the laying, building, and construction of complainant's pipe lines, or any of the pipe lines referred to in the prayer of complainant's bill of complaint, in, through, or out of the State of Oklahoma, by reason of any of the terms or provisions or contents of chapter 67 of the Sessions Laws of 1907–1908 passed and enacted by the Legislature of the State of Oklahoma, or by reason of any other claimed authority or statute of said State, or common law right, rule of action or unwritten law whatsoever; and from in any manner instituting, prosecuting, or conducting any suits, or suing out any writs of process in any of the state courts of the State of Oklahoma against the complainants, or any one representing it, or him, for the purpose of enjoining, restraining or interfering with either of them in the laying, building, construction, maintenance or operation of any gas pipe line either under the authority of said Legislative act contained in said chapter 67 of the Session Laws of Oklahoma 1907–8 above referred to, or under any other law or statute of the State of Oklahoma, or under any common law right, rule of action, or unwritten law of the State of Oklahoma.

ruled the same and ordered the mandate of this court, affirming the former decree, to be spread upon the records. Thereupon this appeal was prosecuted.

In order to properly consider this motion it is necessary to notice the holding in the case in 221 U. S., *supra*. The original proceeding was brought to enjoin the officers of the State of Oklahoma from preventing the carriage in interstate commerce beyond the lines of the State of natural gas which had been severed from the earth by the owners of such gas, and particularly to enjoin the enforcement of a certain statute of the State passed in 1907, known as chapter 67 of the Session Laws of Oklahoma, 1907–08, which is inserted in full in the margin of the report of the case in 221 U. S., at page 239. This court held that natural gas after severance is a commodity which might be dealt in like other products of the earth, as coal and other minerals, and is a legitimate subject of interstate commerce; and that no State by such laws as were involved in the case can prohibit its transportation in interstate commerce beyond the lines of that State. The court held, after considering and construing the provisions of the act of 1907, that it was, upon its face, a law undertaking to prohibit the transmission or transportation in interstate commerce of natural gas to points beyond the State; that it was an unconstitutional interference with the rights of the complainants, who were legitimately engaged in that commerce, and that therefore the act was null and void.

In the course of the opinion the court recognized the right of the State by proper legislation to regulate the removal from the earth of natural gas by the owner thereof, so as to prevent its undue waste, but maintained the decree of the court below, declaring this particular act unconstitutional, upon the grounds of its prohibitory character in attempting to prevent the transmission from the State through the pipe lines of the complainants of a

legitimate subject of interstate commerce. As to the provisions of the statute concerning the right to use the highways of the State, the court declined to discuss the extent of the rights of public or private ownership therein in the State of Oklahoma, but placed the decision in this respect upon the manifest attempt to discriminate against the appellees, engaged in interstate commerce, in giving to domestic corporations engaged in intrastate transportation of natural gas the right to the use of the highways—even longitudinally—while denying to corporations transporting the gas in interstate commerce the right to pass under or over them, and this in the face of the admission in the pleadings that the greater use given to domestic corporations is no obstruction to the highways.

The particular parts of the Oklahoma act of 1907 which it is now contended should be excepted from the operation of the decree are comprised in §§ 5, 6 and 7 of chapter 67, which read as follows:

"SEC. 5. The laying, constructing, building and maintaining a gas pipe line or lines for the transportation or transmission of natural gas along, over, under, across, or through the highways, roads, bridges, streets, or alleys in this State, or of any county, city, municipal corporation or any other public or private premises within this State is hereby declared an additional burden upon said highway, bridge, road, street or alley, and any other private, or public premises may only be done when the right is granted by express charter from the State and shall not be constructed, maintained, or operated until all damages to adjacent owners are ascertained and paid as provided by law.

"SEC. 6. All pipe lines for the transportation or transmission of natural gas in this State shall be laid under the direction and inspection of proper persons skilled in such business to be designated by the chief mining inspector for such duty, and the expenses of such inspection and

supervision shall be borne and paid for by the parties laying and constructing such pipe lines for the transportation or transmission of natural gas.

"SEC. 7. No pipe line for the transportation or transmission of natural gas shall be subjected to a greater pressure than three hundred pounds to the square inch, except for the purpose of testing such lines, and gas pumps shall not be used on any gas pipe lines for the transportation or transmission of natural gas or used on or in any gas well within this State;" and also in the act of March 27, 1909, Compiled Laws of Oklahoma, 1909, Art. 3, c. 75, § 11, regulating domestic corporations, which prohibits the use of pumps or other artificial means in the transmission of gas, when used to the injury of other corporations, consumers and producers, producing or consuming natural gas in the same gas district.

It is contended for the appellants herein that each and all of these sections of the law are constitutionally valid and can be enforced consistently with the opinion of this court when the case was here upon its merits. Without entering upon a discussion of these sections, it is sufficient to say that in so far as they are part of the statute, the main and controlling purpose of which was to prohibit the transportation of natural gas in the lawful channels of interstate commerce, they were for that reason condemned and held void by the former opinion of this court affirming the Circuit Court.

Furthermore, if the laws named (§§ 5, 6 and 7 of the act of 1907 and the act of March 27, 1909) might be valid as statutory regulations, as to individuals and domestic corporations engaged in transporting gas wholly within the State, they are not, by the very terms of these statutes, made applicable to foreign corporations, such as the defendants, engaged in interstate commerce. Such corporations and such commerce are forbidden by the act. We see, therefore, no reason to modify the decree so as to ex-

cept from its provisions the sections of the act of 1907 and the act of 1909 and thus apply them to those which the act itself excludes.

It is furthermore objected that that part of the decree which undertakes to enjoin not only the execution of the statute law of Oklahoma, chapter 67, in controversy, but prevents interference with the pipe lines of complainants "by reason of any other claimed authority or statute of said State, or common law right, rule of action or unwritten law whatsoever; and from in any manner instituting, prosecuting, or conducting any suits, or suing out any writs of process in any of the State courts of the State of Oklahoma . . . under the authority of said legislative act . . . or under any other law or statute of the State of Oklahoma, or under any common law right, rule of action, or unwritten law of the State of Oklahoma," is so broad as to prevent the State from enforcing any of its lawful enactments at any time passed or to be passed under authority of the State or from taking any action whatsoever for protecting the lawful authority of the Commonwealth. But the decree must be read in view of the issues made and the relief sought and granted. Looking to the pleadings and reading the opinion of this court in the case when it was considered upon its merits, and thus construing the decree, we are of opinion that it cannot be given any such broad construction as is intimated by the Attorney General, and will not prevent the enforcement of legitimate legislation of the State of Oklahoma, if such is passed in the exercise of its police powers, and not conflicting with rights protected by the Federal Constitution. As we have said, this court in its decision affirmed the right of the complainants, in the conduct of interstate commerce, to take natural gas out of the State, and declared that a State could not prohibit the transportation of such product beyond its borders and that the legislative act in question was an act the main purpose and effect of

which were to prohibit the exercise of lawful rights secured by the Federal Constitution.

Construing the decree as we do, we think there is no occasion to modify its terms. The order in this proceeding will, therefore, be

Affirmed.